CLERK'S COPY.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1935.

No. 20

RAYBESTOS-MANHATTAN, INC., PETITIONER,

vs.

THE UNITED STATES.

ON WRIT OF CERTIORARI TO THE COURT OF CLAIMS.

PETITION FOR CERTIORARI FILED APRIL 6, 1935.

CERTIORARI GRANTED MAY 20, 1935.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1934

No. 850

RAYBESTOS-MANHATTAN, INC., PETITIONER,

vs.

THE UNITED STATES

ON PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CLAIMS

INDEX

	Original	Print
Record from Court of Claims	1	1
Petition	1	1
Exhibit "A"—Memorandum of agreement	10	6
"B"—Plan and agreement	14	9
"C"—Plan and agreement	40	26
"D"—Plan and agreement	66	43
"E"—Notice and demand	92	61
"F"—Claim for refund	93	62
"G"—Letter rejecting refund claim	95	63
General traverse	98	65
Argument and submission of case	98	65
Special findings of fact	99	66
Conclusion of law	106	75
Opinion of the court, Littleton, J.	106	76
Judgment	110	80
Clerk's certificate (omitted in printing)	111	
Exhibits referred to in findings:		
"H"—Agreement of September 9, 1929	112	80
Exhibit "A"—Plan	122	86
Exhibit "B"—Representations and warranties with respect to organization, etc.	125	88
Exhibit "C"—Information to be furnished Raybestos-Manhattan by the company at the closing	131	91
Exhibit "D"—Conditions precedent to liability of Raybestos-Manhattan, Inc., under agreement	133	92
"I"—Letter from E. L. Swift to Raybestos-Manhattan, Inc., October 13, 1932	134	93

JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 8, 1935.

—6195-C

[fol. 1] **IN COURT OF CLAIMS**

No. 42580

RAYBESTOS-MANHATTAN, INC., a Corporation of the State of New Jersey,

v.

THE UNITED STATES OF AMERICA

1. PETITION—Filed January 9, 1934

To the Honorable the Judges of the Court of Claims:

The claimant, Raybestos-Manhattan, Inc., respectfully represents:

I. That claimant is a corporation duly organized and existing under and by virtue of the Laws of the State of New Jersey, having its principal office at 61 Willett Street in the City of Passaic, in said State, and is engaged in the general business of making and selling asbestos and other materials.

II. That, for the purpose of carrying on said business, claimant was created and organized, in 1929, as a new company, by or through members of three separate committees, who at that time represented substantially all the stockholders of three separate corporations, legal entities, which [fol. 2] then and for some time prior thereto were either complementing or supplementing each other's work or were competing with each other in such general business, the stockholders of, viz: The Raybestos Company, a Connecticut corporation, the United States Asbestos Company, a Pennsylvania corporation, and The Manhattan Rubber Manufacturing Company, a New Jersey corporation, which stockholders had developed previous to the forming of said new company a plan for combining the businesses of all three of said separate corporations into a single enterprise, for their mutual advantage and the benefit and the promotion of the general business in which each stockholder held a capital interest. The plan so developed, to merge these interests of like kind, had its conception at a meeting of individuals holding large or majority blocks of stock in

the several corporations; and it was prompted, on the one hand, by the mutual desire of such stockholders to coordinate, complement and consolidate the businesses and operations of the several corporations so as to effectuate certain economies in the manufacturing and the selling of their products, and, on the other hand, by their further desire to have their several capital interests so merged that such interest of each might represent in the future a share or shares in a better rounded and a more complete industrial unit. Thereupon, to-wit: on or about the 14th day of May, 1929, a memorandum of accord among said individuals was drafted, in which were embodied the basic elements of the plan of merger suggested by them, and same was soon thereafter referred to all holders of the common stock of the several corporations for their approval thereof and acquiescence therein or for their disapproval and rejection. A copy of which Memorandum of Agreement is hereunto at-[fol. 3] tached, made a part hereof and marked Exhibit A. Said Memorandum, as subsequently amended by the parties interested therein, was put in the form of a printed document, dated May 22, 1929, and entitled "Plan and Agreement," and a copy was submitted to each and every holder of said common stock with a form-letter, also dated May 22, 1929, over the names of the respective presidents of the several corporations. The general form and the substance of both the memorandum and the letter of transmittal were the same in each instance, so far as the differences in corporate names, names of stockholders addressed, names of corporate executive officers, and names of proposed members of the three sets of committee members, permitted. Copies of said "Plan and Agreement" and of said form-letter, as sent to each and every common-stockholder of the several corporations respectively, are hereunto attached, made a part hereof, and are marked Exhibits B., C., and D., respectively. Approval of the plan and agreement, through the expressed consent and the acquiescence of the several common-stock holders of the several corporations, and by all the owners of the common stock of the said corporations depositing their respective holdings with the several committees, designated to control procedure and to effect the merger of their capital interests, and to exchange the shares of common stock aforesaid for shares of a corporation, called in the Agreement "the New Company," led directly

to and resulted in the creation and organization in 1929 of claimant by or through the members of the three separate committees, they functioning, for such purpose, as a general committee representing and acting for all common-stock holders of each of the three separate corporations.

[fol. 4] III. That in consideration of all the holders of common stock of The Raybestos Company, one of the constituent companies in such merger of capital interests, severally depositing their respective shares with the committee representing that corporation, pursuant to the provisions of the "Plan and Agreement" that had been submitted to them by the president of The Raybestos Company, and in consideration that their individual capital interests collectively then represented all the assets of The Raybestos Company, subject to all of the obligations and liabilities of that corporation, all of which entered into and became a part of said merger, the shares of common no par value stock of "the New Company" to be issued for shares of the common stock of The Raybestos Company, to wit: 267,012 shares, were issued by claimant to said stockholders direct, with the consent and at the request of the said committee, each of said stockholders receiving through the issue of said 267,012 shares one or more certificates of the Raybestos-Manhattan, Inc., registered in the name of the stockholder for as many of said common no par value shares as the shares of The Raybestos Company common stock deposited in negotiable form by the stockholder entitled the stockholder to receive under said "Plan and Agreement."

IV. That in consideration of all the holders of common stock of the United States Asbestos Company, another of the constituent companies in such merger of capital interests, severally depositing their respective shares with the committee representing that corporation, pursuant to the provisions of the "Plan and Agreement" that had been submitted to them by the president of the United States Asbestos Company, and in consideration that their indi-[fol. 5] vidual capital interests collectively then represented all the assets of the United States Asbestos Company, subject to all of the obligations and liabilities of that corporation, all of which entered into and became a part of said merger, the shares of common no par value stock of "the New Company" to be issued for shares of the common stock

of the United States Asbestos Company, to-wit: 114,000, in the aggregate, were issued by claimant to said stockholders direct, with the consent and at the request of the said committee, each of said stockholders receiving through the issue of said 114,000 shares one or more certificates of the Raybestos-Manhattan, Inc., registered in the name of the stockholder for as many of said common no par value shares as the shares of the United States Asbestos Company common stock deposited in negotiable form by the stockholder entitled the stockholder to receive under said "Plan and Agreement."

V. That, thereafter, the Manhattan Rubber Manufacturing Company, the remaining of the constituent companies in such merger of capital interests, effected a merger with claimant under the Laws of the State of New Jersey, each being a corporation of that State, and since then claimant has carried on combined the businesses which the three merging or uniting corporations had previously conducted under separate managements.

VI. That by notice and demand, dated February 3, 1933 (Miscellaneous—December, 1932, F-404-L-O), the Collector of Internal Revenue, at Newark, N. J., advised claimant of there having been assessed against claimant, by reason of the issuing of its common no par value shares, as aforesaid, stock transfer stamp taxes aggregating the sum of $7,620.24, a copy of which notice and demand is hereunto [fol. 6] attached, marked Exhibit E., and made a part hereof.

VII. That claimant, thereafter, believing the taxes had been illegally, erroneously and wrongfully assessed, filed with said Collector a claim (No. M-41733) for the abatement of the taxes so assessed, but at a hearing thereon held in the offices of the Commissioner of Internal Revenue, at Washington, D. C., on May 4, 1933, it was suggested by Government representatives there present that it might inure to the benefit of claimant protesting against the legality of the assessment, and afford to claimant a more satisfactory procedure for the determination of the question involved, should claimant pay the taxes assessed, with any interest thereon, if accrued, and afterwards file a claim for the refund of the taxes and interest paid.

VIII. That, afterwards, to-wit: on the 8th day of May, 1933, claimant, acting in conformity with the suggestion aforesaid, paid to said Collector of Internal Revenue said sum of $7,620.24, together with $165.11 as the interest accrued thereon to date of payment, or a total of $7,785.35, and procured the Collector's Paid Stamp upon the origi l "Notice and Demand for Tax."

IX. That, afterwards, to-wit: on the 15th day of May, 1933, claimant executed a claim for refund of tax wrongfully assessed and illegally collected, and later filed same with said Collector of Internal Revenue, a copy of which claim is hereunto attached, made a part hereof, and marked Exhibit F.

X. That, thereafter, to-wit: on the 12th day of December, 1933, the Commissioner of Internal Revenue, acting by and through his deputy, disallowed the claim for refund so filed by claimant. A copy of the Commissioner's letter, dated Dec. 12, 1933, addressed to Raybestos-Manhattan, Inc., and [fol. 7] advising claimant of the rejection of its said claim, is hereunto attached, made a part hereof, and marked Exhibit G.

XI. That the provision of law under which said assessment was made, and upon which the petitioner claims such refund, is Schedule A-3 of Section 800 of the Revenue Act of 1926 (44 Stat. 99, 101).

XII. That said total sum of $7,785.35, with lawful interest thereon from said 8th day of May, 1933, is now wrongfully retained by the United States of America and withheld from claimant against its will, and, therefore, claimant brings this suit based upon the facts herein stated and hereunto appended and the rights secured to claimant under the Acts of Congress in such case made and provided.

XIII. That no action has been had on this claim in Congress or by any of the Departments, other than is herein stated, that claimant has at all times borne true allegiance to the Government of the United States, that it has not in any way voluntarily aided, abetted or given encouragement to rebellion against such Government, that it is and always has been the sole and absolute owner of the claim here presented, that it has made no transfer or assignment of said claim or of any part thereof or of any interest

therein, and that it is justly entitled to the amount herein claimed from The United States of America after allowing all just credits and set-offs.

XIV. That claimant believes the facts as herein stated to be true.

Wherefore, the premises considered, claimant, as your petitioner, prays judgment against The United States of America for the full sum of Seven Thousand, Seven Hundred Eighty-five Dollars and Thirty-five Cents ($7,785.35), [fol. 8] with lawful interest thereon from the said 8th day of May, 1933, together with its reasonable costs and disbursements herein, and for such other and further relief as to this Honorable Court seems right and equitable.

And, your petitioner will ever pray, etc.

Raybestos-Manhattan, Inc., By A. F. Townsend, Chairman of the Board. By F. L. Curtis, Treasurer. (Raybestos-Manhattan, Inc., Corporate Seal, 1929, New Jersey.) Attest: Morton F. Judd, Secretary.

[fol. 9] *Duly sworn to by F. L. Curtis. Jurat omitted in printing.*

Charles H. LeFevre, Howard S. LeRoy, Attorneys for Claimant. Attorneys' Address: LeFevre & LeRoy, 400-1-2 Hibbs Building, Washington, D. C. S. R. Zimmerman, Esquire, 50-52 North Duke Street, Lancaster, Pa., of Counsel.

[fol. 10] EXHIBIT "A" TO PETITION

Memorandum of Agreement made this 14th day of May, 1929, by and between The Raybestos Co., a Connecticut corporation, party of the first part (hereinafter referred to as Raybestos), The Manhattan Rubber Mfg. Co., a New Jersey corporation, party of the second part (hereinafter referred to as Manhattan) and United States Asbestos Co., a Pennsylvania corporation, party of the third part (hereinafter referred to as United States), Witnesseth:

Raybestos has outstanding capital stock consisting of: 8% cumulative preferred stock, ($100 par value) approxi-

mately 6,000 shs. Common Stock ($25 par value) 118,672 shares.

Manhattan has outstanding capital stock consisting of: common stock ($25 par value) 200,000 shares.

United States has outstanding capital stock consisting of: 7% cumulative preferred stock, (par value $100) approximately 4,750 shs. Common stock (no par value) 100,000 shares.

None of said companies will have outstanding at the time of the consummation of the transactions herein provided for any funded debt or secured debt of any sort. Each of the companies has exhibited to the other balance sheets setting forth all assets and liabilities and income statements for recent years.

The officers of each company have agreed that it is for the best interest of each company and its stockholders that the assets and businesses of such companies should be com- [fol. 11] bined into a single company and that stock of such company should be substituted for stock of such companies on the basis set forth below.

Now, therefore, each of said companies, in consideration of the agreements of the others, hereby agrees to the following plan, subject to the necessary action by directors and stockholders:

1. A consolidated company shall be formed which either directly or through subsidiaries, using such method as may be approved by counsel, shall own the entire assets of each of the above named companies. Such consolidated company may be any one of the existing companies or may be a new corporation formed for the purpose under the laws of such state as the parties shall determine.

2. The capitalization of the consolidated company shall consist of 1,000,000 shares of common stock, such shares to be of no par value and all of one class. Of such authorized stock 631,012 shares shall be issued in exchange for or replacement of the shares of common stock of the companies now outstanding, and 45,000 shares shall be sold for cash, as hereinafter provided.

3. The basis of the issue of stock of the consolidated Company for or in replacement of stock of the above named companies shall be as follows:

(a) In the case of Raybestos, for the outstanding common stock of that Company, consisting of 118,672 shares, there shall be issued 267,012 shares of the consolidated company, each stockholder of Raybestos receiving 2-25/100 shares of the consolidated company for each share of Raybestos common stock.

(b) In the case of Manhattan, for the outstanding common stock of that company, consisting of 200,000 shares, there shall be issued 250,000 shares of the consolidated [fol. 12] company, each stockholder of Manhattan receiving 1-25/100 shares of the consolidated company for each share of Manhattan common stock.

(c) In the case of United States, for the outstanding common stock of that company, consisting of 100,000 shares, there shall be issued 114,000 shares of the consolidated company, each stockholder of United States receiving 1-14/100 shares of the consolidated company for each share of United States common stock.

4. The consolidated Company will sell to Hayden, Stone & Co., Hemphill, Noyes & Co., and The Equitable Trust Company, all of New York City, or their nominees, 45,000 shares of stock for $30 per share in cash, under the terms of an agreement substantially in the form hereto annexed, the proceeds of such sale to be used to replace cash required for the retirement of the existing preferred stocks of Raybestos and United States, the balance of such proceeds to be used for the general purposes of the corporation.

5. Each of the parties hereto will take such steps as may be necessary or expedient, including action by directors and stockholders, to effect the carrying out of the plan herein agreed to as promptly as may be practicable. Each of the parties shall by notice to the others promptly designate a representative to constitute a committee for the purpose of carrying out the plan. The consolidated company shall pay all expenses of every nature involved in carrying out the plan and the issue and delivery of its stock.

6. The plan shall be carried out as soon as practicable, taking into account the proceedings of directors and stockholders required by law, and the requirements of the re-

[fol. 13] spective certificates of incorporation and by-laws of the parties hereto. Pending the carrying out of the plan the business of each of the parties shall be carried on in the normal way. No party shall make any distribution to its stockholders, other than dividends at the rates hitherto established, or incur any unusual liability or commitment, except that Raybestos and United States may take such steps as may be necessary to retire their existing preferred stocks, and that any party may pay off existing mortgages or liens on its property.

In witness whereof, the parties hereto have executed this agreement on the day and year first above written.

The Raybestos Co. (Signed) by S. Simpson; The Manhattan Rubber Mfg. Co. (Signed) by A. F. Townsend; United States Asbestos Co. (Signed) by S. R. Zimmerman.

[fol. 14] EXHIBIT "B"

The Raybestos Company, Bridgeport, Connecticut

Office of the President

To holders of common stock of the Raybestos Company:

Representatives of your Company and of The Manhattan Rubber Manufacturing Company, a New Jersey corporation, and United States Asbestos Company, a Pennsylvania corporation, have developed a plan for combining the businesses of such companies. Such plan, it is believed, will prove of great advantage to the business and stockholders of all three companies. Under this plan, described in the accompanying "Plan and Agreement" to which you are referred, it is contemplated that a corporation (hereinafter called "the New Company") will acquire, directly or indirectly, by purchase, merger, consolidation or otherwise, all of the assets of the three companies, and will assume all of their obligations and liabilities.

The New Company is to have an authorized capital consisting of 1,000,000 shares without par value, of which it is planned to issue 631,012 shares in replacement of the shares of stock of The Raybestos Company, The Manhat-

tan Rubber Manufacturing Company, and United States Asbestos Company. Prior to the consummation of the Plan the outstanding issues of Preferred Stock of The Raybestos Company and United States Asbestos Company will be called for redemption. The holders of Common Stock of the three companies will receive Common Stock [fol. 15] of the New Company in replacement of their present stock on the following basis:

	Shares of Common Stock Now Outstanding	Shares of Common Stock of New Company
2-25/100 shares of stock of the New Company for each share of Common Stock of The Raybestos Company.	118,672 ($25 par value) (The Raybestos Company).	267,012
1-25/100 shares of stock of the New Company for each share of stock of The Manhattan Rubber Manufacturing Company.	200,000 ($25 par value) (The Manhattan Rubber Manufacturing Company).	250,000
1-14/100 shares of stock of the New Company for each share of Common Stock of United States Asbestos Company.	100,000 (no par value) (United States Asbestos Company).	114,000

An additional 45,000 shares of Common Stock of the New Company is also to be sold for cash to replace funds required for the retirement of Preferred Stock of existing companies and for the general purposes of the New Company.

Upon the consummation of the Plan, the New Company will have no funded debt and no preferred stock and will have ample working capital. Combined earnings of the three companies for 1928 available for dividends, as shown by their audited statements, amounted to $2,465,586, equivalent to $3.65 per share for the year 1928 on the stock of the New Company which will be outstanding upon the consummation of the Plan. Combined earnings for the first quarter of 1929, as reported by the three companies, amounted to $888,417, equivalent to $1.31 per share for such quarter on such stock. It is expected that the New Company will inaugurate a dividend policy resulting in a return to each stockholder on his holdings in the New Company not less than the dividend return on his holdings of [fol. 16] common stock in the present company.

It is believed that combining the business of the three companies will bring about substantial economies both in manufacturing and selling expenses. The combined business will also make a better rounded and more complete industrial unit. With a view of furnishing the stockholders a wider market for their holdings, application will be made to list the stock of the New Company on the New York Stock Exchange.

Messrs. Simpson and Hincks of your Board of Directors and Mr. Clifford Hemphill will serve as a Committee to receive deposits of stock under the Plan and have caused to be prepared the Plan and Agreement under which such deposit may be made. Depositors will not be called upon to pay any compensation or expenses of the Committee or any other expenses.

Holders of more than a majority of the Common Stock of your Company and holders of more than a majority of the common stock of each of the other two companies have already approved the Plan and have agreed to deposit their stock. Prompt cooperation by all stockholders in the deposit of their stock will greatly facilitate the consummation of the Plan, and is necessary to assure participation in the Plan.

As provided in the Agreement the registered holders of Certificates of Deposit will receive dividends paid on the deposited stock pending the consummation of the Plan. Upon deposit of the stock the Depositary will issue Certificates of Deposit which will be transferable in the same way as the stock certificates. Application will be made to admit such Certificates of Deposit to trading on the New York Curb Market.

[fols. 17 & 18] Deposited stock certificates must be duly endorsed in blank for transfer or accompanied by duly executed stock powers and signatures must be guaranteed by a New York City Bank or Trust Company or a bank or trust company having a New York City correspondent or by a New York Stock Exchange firm. Transfer tax stamps need not be attached, except where it is requested that a Certificate of Deposit be issued in the name of some one other than the holder of record of the deposited stock. Stockholders should forward their stock certificates with the enclosed letter of transmittal immediately to Guaranty Trust Company of New York, Trust Depart-

ment, 140 Broadway, New York City, Depositary. For the convenienec of stockholders arrangements have been made whereby stockholders may deliver their stock certificates to The First National Bank of Bridgeport, Bridgeport, Connecticut, or Hincks Bros. & Co., Bridgeport, Connecticut, who will forward the same to the Despositary.

Deposit of stock will constitute assent to the Plan and Agreement. If the Plan should fail of consummation because of insufficient deposited stock or otherwise, the deposited stock will be returned to the depositors without charge.

The Committee has fixed June 17, 1929, as the last day for making deposits under the Plan.

The Board of Directors of your company by a resolution unanimously adopted have recommended that the Common Stockholders of the company deposit their stock under the Plan. On behalf of the Board of Directors and as President of your company I recommended that you promptly deposit your stock.

May 22, 1929.

Sumner Simpson, President.

NOTE.—Requests for further information should be addressed to the Secretary of the Committee, Mr. George K. Graves, Jr., 15 Broad Street, New York City.

[fols. 19 & 20] The Raybestos Company, Common Stock. Plan and Agreement, Dated May 22, 1929. Sumner Simpson, Clifford Hemphill, William T. Hincks, Committee. George K. Graves, Secretary, 15 Broad Street, New York City. Depositary, Guaranty Trust Company of New York, New York City, N. Y.

[fol. 21] Plan

It is proposed that all of the business and assets of The Raybestos Company, a Connecticut corporation (herein and in the annexed Agreement called "the Raybestos Company"), The Manhattan Rubber Manufacturing Company a New Jersey corporation (herein and in the annexed Agreement called "the Manhattan Company") and United States Asbestos Company, a Pennsylvania corporation (herein and in the annexed Agreement called "the United States Company") shall be acquired directly or indirectly,

by purchase, merger, consolidation, or otherwise, by a corporation (herein and in the annexed Agreement called "the New Company"), the New Company to assume all of the liabilities and obligations of the Raybestos Company, the Manhattan Company and the United States Company.

The New Company shall have an authorized capital of 1,000,000 shares of common stock, without par value, and may be a new corporation organized under the laws of any state selected by the Committee constituted by the Agreement annexed hereto or, at the election of such Committee, the New Company may be any one of the above-named companies with appropriate change of its present capital structure and charter.

The stockholders of the above-named companies are to receive stock of the New Company on the following basis:

2¼ shares of common stock of the New Company for each share of common stock of the Raybestos Company.

[fol. 22] 1¼ shares of common stock of the New Company for each share of stock of the Manhattan Company.

1-14/100 shares of common stock of the New Company for each share of common stock of the United States Company.

In lieu of any fraction of a share of common stock of the New Company deliverable to any stockholder of any of the above-named companies, there will be issued non-voting and non-dividend bearing common stock scrip, exchangeable, in amounts calling for one or more full shares, for a certificate for such share or shares.

On the above basis there will be required for distribution to the common stockholders of the Raybestos Company, the Manhattan Compan yand the United States Company an aggregate of 631,012 shares of common stock of the New Company. The New Company will sell a further 45,000 shares of such stock for cash to provide additional capital.

Prior to the consummation of the Plan, the preferred stocks of the Raybestos Company and the United States Company will be called for redemption.

The Committee constituted by the annexed Agreement shall have full discretion as to the method of carrying the Plan into effect and the legal procedure incident thereto and also as to the amount of stock of the Raybestos Company which must be deposited under this Plan and the an-

nexed Agreement in order to make the consummation of the Plan practicable.

[fol. 23] Agreement

Agreement, dated May 22, 1929, by and between Sumner Simpson, Clifford Hemphill and William T. Hincks (hereinafter called the "Committee"), parties of the first part, and such holders of Common Stock of The Raybestos Company, a Connecticut corporation (hereinafter called "the Raybestos Company"), as shall become parties hereto in the manner hereinafter provided and their successors in interest (hereinafter collectively called "the Depositors"), parties of the second part:

In consideration of the consent and undertaking of the Committee to act as such in behalf of the Depositors as hereinafter set forth, and of the mutual agreements herein contained, and for other good and valuable considerations, the parties hereto agree, each Depositor agreeing with each of the other Depositors and with the Committee, as follows:

1. The Depositors hereby constitute and appoint Sumner Simpson, Clifford Hemphill and William T. Hincks a Committee, with all of the powers, rights and privileges by this Agreement conferred upon the Committee.

2. The accompanying Plan is and shall be taken to be a part of this Agreement, with the same effect as though each and every provision thereof had been embodied herein, and said Plan and this Agreement shall be read as parts of one and the same instrument.

3. Holders of Common Stock of the Raybestos Company may become parties hereto by depositing the certificates representing such stock hereunder with the Depositary hereinafter in paragraph 4 designated or with any subdepositary appointed as hereinafter provided, on or before the close of business on June 17, 1929, or such later date as the Committee from time to time may fix as hereinafter [fol. 24] provided. Each stock certificate so deposited must be duly endorsed in blank for transfer or accompanied by a duly executed stock power in form approved by the Committee and must be accompanied by such evidence as the Committee may in any case require of the genuineness and sufficiency of such endorsement or stock power. Except

where it is requested that a Certificate of Deposit be issued in the name of someone other than the record holder of the stock deposited transfer tax stamps need not be attached, the cost of any such stamps which may be required to be affixed being part of the expenses of the Committee under the Plan and this Agreement. Every stockholder who shall so deposit his stock certificate or certificates shall be held to have assented to, and shall be bound by the provisions of, the Plan and this Agreement in the same manner and with the same effect as if he had executed the same.

The Committee shall have full power in its discretion from time to time, in general or in particular instances, and upon such general or special terms and conditions as it may see fit, to extend the time for the making of deposits under the Plan and this Agreement, and to accept the deposit of any of such stock under the Plan and this Agreement after the period at any time limited for such deposit shall have elapsed.

4. Upon depositing his stock as aforesaid, each Depositor will receive a Certificate or Certificates of Deposit in the name of the Depositor, specifying the number of shares deposited and reciting that such stock has been deposited hereunder, and otherwise in such form as shall be prescribed by the Committee, signed by the Depositary hereinafter designated or a sub-depositary appointed as herein-[fol. 25] after provided, and registered by the appropriate Registrar.

The Committee hereby appoints Guaranty Trust Company of New York, New York City, N. Y., Depositary of the Committee and hereby appoints The Commercial National Bank and Trust Company of New York, New York City, N. Y., Registrar to register Certificates of Deposit signed by the Depositary.

The Depositary shall keep at its office books (which shall be deemed books of the Committee) and shall record in such books the names and addresses (as furnished) of all persons to whom Certificates of Deposit are issued by the Depositary and shall likewise record in such books all transfers of Certificates of Deposit made by the Depositary.

The interests represented by the Certificates of Deposit issued hereunder shall be transferable, subject to the terms and conditions of the Plan and this Agreement, on the books of the Committee by the holders thereof in person or by

duly authorized attorney upon surrender of such Certificates of Deposit, properly endorsed, accompanied with any transfer tax stamps required by law. Thereupon a new Certificate or Certificates of Deposit, registered in the name of the transferee, shall be issued. Each transferee of any Certificate of Deposit shall be deemed to be a Depositor and shall be a party to this Agreement, and, as such, entitled to the same rights and privileges, and in every way as fully bound by and subject to the Plan and this Agreement, as the original Depositor.

Title to the Certificates of Deposit, when duly endorsed, shall be transferable, to the extent permitted by law, with the same effect as in the case of negotiable instruments. [fol. 26] Each holder of a Certificate of Deposit by acceptance thereof shall be deemed to consent and agree that delivery by any bearer thereof of such Certificate of Deposit, duly endorsed in blank, shall vest the title thereto and all rights and interests represented thereby in the transferee to the same extent, for all purposes, as would delivery under like circumstances of a negotiable instrument payable to bearer; provided, however, that the Depositary, any sub-depositary, any agent for the Depositary and the Committee may treat the record holder of any Certificate of Deposit (or, when presented duly endorsed in blank, the bearer thereof) as the absolute owner thereof for all purposes, and shall not be affected by any notice to the contrary.

The Committee may make provision for the replacement of any Certificates of Deposit which shall be lost, stolen or destroyed or which shall become mutilated.

5. The Committee is hereby authorized and empowered to construe the Plan and this Agreement, and the Committee's construction of the same, made in good faith, shall be final, conclusive and binding. The Committee may supply any defect or omission in the Plan and this Agreement and reconcile any inconsistency therein.

6. Each and every Depositor hereby authorizes and requests the Committee, as the Depositor's agent and attorney-in-fact, to endeavor to carry the Plan into practical operation, in such form and in such manner and by such steps as the Committee in its uncontrolled discretion shall deem best, and for this purpose the Committee is empowered hereby to exercise all the rights of the Depositors with

respect to the deposited stock. The methods to be adopted in carrying out the Plan and this Agreement shall be en- [fol. 27] tirely discretionary with the Committee and the Plan and this Agreement are in all respects to be liberally construed so as to enable the Committee to carry into effect the purposes of the Plan.

The deposit of shares of stock in accordance with the provisions of the Plan and this Agreement shall not constitute an assignment thereof, but the title to the deposited stock shall remain in the Depositors thereof unless and until the Committee shall elect to take title thereto and file with the Depositary a certified copy of its resolution so electing, whereupon title thereto shall vest in the Committee as joint tenants and not as tenants in common, and in the survivor or survivors of the Committee and their successors, or, at the option of the Committee, expressed in such resolution, in its nominee or nominees. The Depositors severally agree that, at any time when the Committee shall have elected to take title to the deposited stock, they will execute and deliver any and all further transfers and assignments or other writings requested by the Committee in order more effectively to vest the ownership of the deposited stock in the Committee, its nominee or nominees. Unless and until the Committee shall so elect to take title thereto and file with the Depositary a certified copy of its resolution so electing, any and all directions to the Depositary respecting any such shares of stock, and any and all disposition by the Committee of any such shares of stock, and any and all action of the Committee with respect to any such shares of stock, shall be as the irrevocable agent and attorney-in-fact of the Depositors.

7. The Committee may take any and all steps and proceedings, and do any and all acts and things, and execute and deliver any and all documents, which it shall deem [fol. 28] necessary, expedient or desirable for the purpose of carrying out the Plan and this Agreement, or for the purpose of asserting, protecting or enforcing the rights or interests of the Depositors, or for any other purpose thereof. Without prejudice to the general powers herein granted, the Committee, for the purpose of carrying out the Plan and this Agreement, may procure the organization of one or more new corporations under such name or

names as it shall determine or may adopt or use any existing or future corporations with such change of name, if any, as it shall determine, and, with respect to the Raybestos Company or its assets and business, may make or cause to be made such consolidations, mergers, purchases, sales or other arrangements, and may cause to be made such charter amendments and changes in capital structure, and may take such other steps, as the Committee may deem advisable; and may form or procure the formation of any syndicate or syndicates, of which the Committee, or any member or members thereof, acting alone or in association with others, may be the manager or managers. The Committee, in its discretion, may leave undisturbed the rights of stockholders of the Raybestos Company who do not deposit their stock under the Plan and this Agreement, or may make or approve such provision for such stockholders as the Committee may deem expedient.

Without prejudice as aforesaid, the Depositors hereby severally irrevocably authorize and empower the Committee (as the holder of the deposited stock, provided the Committee shall have taken title thereto as hereinabove permitted, or otherwise as the attorney and/or proxy of the Depositors) to call or waive notice of, and to attend in person or by proxy or substitute proxy or by proxy ap- [fol. 29] pointed by the Committee as the agent and attorney-in-fact of the Depositors, any and all meetings of stockholders of the Raybestos Company and to vote or cause to be voted, or to consent with respect to, any or all of the deposited stock in any manner and for any purpose deemed by the Committee to be advisable for the carrying out of the Plan and this Agreement, expressly including among such purposes the amendment of the charter of the Raybestos Company in any manner which the Committee, being advised by counsel, shall deem advisable to facilitate the consummation of the Plan, and any transfer or conveyance of assets contemplated thereby; and the Depositors hereby severally irrevocably authorize and empower the Committee, with respect to any stock of the New Company received by the Committee (until the same have been distributed, as contemplated by the Plan, to the Depositors entitled ultimately to receive the same), to deal with such stock as the irrevocable agent and attorney-in-fact of the Depositors, and to call or waive notice of and to attend in person or by proxy or substitute proxy or by proxy appointed by the

Committee as the agent and attorney-in-fact of the Depositors, any and all meetings of stockholders of the New Company and to vote or cause to be voted, or to consent with respect to, any or all of such stock in any manner and for any purpose deemed by the Committee to be advisable for the carrying out of the Plan. The Committee is authorized and empowered as attorney-in-fact of each and every of the Depositors to execute, for and in the name of the Depositors or in the name of the Committee, any and all proxies, waivers, consents or other documents deemed by the Committee desirable to facilitate the consummation of the Plan.

[fol. 30] No expense incurred by, or compensation of, the Committee or any other expenses shall be charged against the Depositors or against any of the deposited stock, the Raybestos Company having agreed to pay the same.

8. The Depositors hereby severally irrevocably authorize and empower the Committee to receive, and irrevocably authorize and direct the Raybestos Company and the New Company to pay to or on the order of the Committee all dividends paid on the deposited stock so long as it shall remain on deposit hereunder or on stock of the New Company received by the Committee (until the same shall have been distributed, as contemplated by the Plan, to the Depositors entitled ultimately to receive the same). When and as any dividends shall be receivable by the Committee on deposited stock or on such stock of the New Company, the Committee will direct the Raybestos Company or the New Company, as the case may be, to pay the same to the persons who on the books of the Committee to be kept by the Depositary shall be the record holders of Certificates of Deposit representing such stock at the close of business on the date as of which the Raybestos Company or the New Company determines its recorded stockholders entitled to receive such dividend; such payments to be made to the holders of such Certificates of Deposit ratably according to the number of deposited shares represented by such Certificates respectively.

9. Upon compliance with all the terms and conditions of the Plan and this Agreement, Depositors will be entitled to receive, upon the consummation of the Plan, and upon surrender of their Certificates of Deposit, the stock, and script for fractions of shares of stock, of the New Com-

pany (but only as and when issued and ready for delivery) [fol. 31] to which they shall be entitled pursuant to the terms and provisions of the Plan and this Agreement.

The Committee, subject to the provisions of this Agreement, is authorized and empowered to prescribe terms and conditions as to the surrender of Certificates of Deposit with which holders of Certificates of Deposit must comply in order to receive the stock, and scrip for fractions of shares of stock, of the New Company receivable by the Depositors under the Plan, and for the purpose of facilitating the delivery thereof, the Committee may order the books of the Committee for the transfer of Certificates of Deposit to be permanently closed against the making of transfers upon a date not less than ten days after mailing notice of such closing of the books to the Depositors in accordance with the provisions of Section 13 hereof.

The Depositors hereby severally irrevocably authorize and empower the Committee, upon and after any transfer of the business and assets of the Raybestos Company to the New Company in accordance with the Plan, to take such action or initiate or participate in such proceedings by way of disposing of, extinguishing or otherwise dealing with the deposited stock of the Raybestos Company as the Committee in its discretion shall determine.

10. The Committee may abandon the Plan at any time if in its discretion the Committee shall deem it impracticable to carry the same into execution. Such abandonment shall be effected by resolution of the Committee, and notice thereof shall be lodged with the Depositary, and mailed to the Depositors in accordance with the provisions of Section 13 hereof. Thereafter any Depositor may withdraw the stock of the Raybestos Company represented by [fol. 32] his Certificate of Deposit. In the absence of such notice of abandonment no Depositor may withdraw stock of the Raybestos Company represented by his Certificate of Deposit or withdraw from this Agreement prior to June 1, 1930. If the Plan shall not have been carried into execution by that date, any Depositor may thereafter withdraw the stock of the Raybestos Company represented by his Certificate of Deposit.

The Committee, subject to the provisions of this Agreement, is authorized and empowered to make reasonable regulations as to the procedure to be followed by holders of

Certificates of Deposit in withdrawing, in either of the events aforesaid, the stock of the Raybestos Company represented by their Certificates of Deposit, and for the purpose of facilitating delivery of such stock the Committee may order the books for the transfer of Certificates of Deposit to be permanently closed against the making of transfers upon a date not less than ten days after mailing notice of such closing of the books to the Depositors in accordance with the provisions of Section 13 hereof.

11. Every holder of a Certificate of Deposit, by the surrender thereof to the Committee and the receipt of certificates representing the deposited stock, or the stock, and scrip for fractions of shares of stock, of the New Company, deliverable to him hereunder, shall be deemed to have released and discharged the Committee, the Depositary and all other persons from all liability and accountability of any and every kind hereunder.

After the books for the transfer of Certificates of Deposit shall have been closed against the making of transfers (whether upon the consummation of the Plan or upon its [fol. 33] abandonment) the Committee, whenever there shall be lodged with the Depositary

(a) in case the Plan shall have been consummated, the stock, and scrip for fractions of shares of stock, of the New Company which Depositors holding outstanding Certificates of Deposit shall be entitled to receive under the Plan and this Agreement, or

(b) in case the Plan shall have been abandoned, the stock of the Raybestos Company represented by the outstanding Certificates of Deposit,

may instruct the Depositary to hold the stock, and scrip for fractions of shares of stock, of the New Company, or the stock of the Raybestos Company, as the case may be, so lodged with it for the holders of outstanding Certificates of Deposit and to distribute the same to such holders upon surrender to it of their Certificates of Deposit; and, such stock having been so lodged and such instructions so given, the Committee shall be under no responsibility to the Depositors, and the rights of the Depositors shall be limited to receiving from the Depositary the stock, and scrip for fractions of shares of stock, of the New Company, or the

stock of the Raybestos Company, as the case may be, so held by the Depositary.

12. Neither the Committee nor the Depositary nor any sub-depositary nor any agent for the Depositary is to be under any obligation, legal or equitable, express or implied, to any holder of stock of the Raybestos Company who shall not deposit the same hereunder, or to any person whomsoever, other than the holders of Certificates of Deposit issued in accordance with the terms hereof. With respect to the holders of such Certificates of Deposit, the Committee undertakes to endeavor in good faith to [fol. 34] carry out the Plan and this Agreement, but neither the Committee nor any member thereof nor the Depositary nor any sub-depositary nor any agent for the Depositary assumes any responsibility for the carrying out of the Plan and this Agreement or for the result of any steps taken or acts done for the purpose thereof. Neither the Committee nor any member thereof nor the Depositary nor any sub-depositary nor any agent for the Depositary shall be liable for any act or omission of any attorney, agent or employee, or for anything except for his or its own willful misconduct. Neither the Depositary nor any sub-depositary, by the delivery of any Certificate of Deposit hereunder, makes any representation or warranty of any sort whatsoever other than that it agrees to use its best judgment and good faith in the performance of its duties hereunder, and by the acceptance of any such Certificate of Deposit every holder expressly relieves the Depositary and each and every sub-depositary of any liability except as aforesaid. Neither the Committee nor any member thereof nor the Depositary nor any sub-depositary nor any agent for the Depositary assumes any responsibility or liability as to the genuineness, validity or regularity of any of the stock, or scrip for fractions of shares of stock, of the New Company created or issued in connection herewith, or as to the validity or sufficiency of any corporate proceedings or acts of the Raybestos Company, the Manhattan Company, the United States Company or the New Company.

Any member of the Committee or any corporation, association or partnership of which any member of the Committee may be an officer, director, member or partner, or the Depositary or any sub-depositary or agent for the De- [fol. 35] positary or any officer or director of any of them,

may be or become pecuniarily interested in any stock, Certificates of Deposit, subscription rights, contracts, property or matters which the Plan or this Agreement concerns, and may participate in any underwriting syndicate as syndicate manager, syndicate subscriber, or otherwise, and may be an officer or director of the Raybestos Company or of the Manhattan Company or of the United States Company or of the New Company. The Depositary or any subdepositary or agent for the Depositary may be trustee under any agreement created or entered into in connection with the Plan, or otherwise act in any manner for the Raybestos Company or for the Manhattan Company or for the United States Company or for the New Company or for the holders of any of the stock of any of such corporations.

13. Any notice or other communication required or permitted by the provisions hereof to be sent to any Depositor shall be conclusively deemed to have been duly communicated if and when deposited in the United States mail, postpaid, addressed to such Depositor at his address appearing upon the books of the Committee kept by the Depositary.

An affidavit made before a notary public by the Secretary of the Committee, or by an officer or employee of the Depositary, with respect to the mailing of notices herein provided for shall be conclusive evidence of the giving of such notices.

14. The Committee, as from time to time constituted and notwithstanding any vacancy, shall have all the powers, rights and interests of the Committee as named in this Agreement. The Committee may elect a Chairman, and may appoint a Secretary (who may, but need not, be a mem- [fol. 36] ber of the Committee) who shall keep a record of its acts and proceedings. From time to time the Committee may choose such other officers and designate or cause to be designated such committees or sub-committees (whose members may, but need not, be members of the Committee) as it may see fit, and may confer upon any of its officers, committees or sub-committees such powers as it may deem advisable. The Committee from time to time may add to its number by electing, by a majority vote of its then members, an additional member or members, and the member or members so elected shall have all the powers, rights and interests of the members of the Committee under the Plan and this Agreement and, together with those herein named or

their successors, shall constitute the Committee under the Plan and this Agreement with like force and effect as though they were specifically named herein. Any member of the Committee may resign by filing written notice of his resignation with the Chairman or Secretary of the Committee. In case at any time a vacancy shall occur in the Committee by death or resignation, or from any other cause, such vacancy may, but need not, be filled by a majority of the then members of the Committee. Notices of changes in the membership of the Committee filed with the Depositary shall bind all parties hereto.

A majority of the members of the Committee shall constitute a quorum for all purposes, and all the powers of the Committee may be exercised by a majority of its then members either at a meeting, or in writing or by telegraph, wireless or cable without a meeting. A member of the Committee by written proxy may authorize any person (who may, but need not, be another member of the Committee) [fol. 37] to act in his place for any and all purposes. The certificate of the Chairman or Secretary as to any action by the Committee shall be conclusive upon and full protection to the Depositary and all sub-depositaries and agents for the Depositary and all other persons, and conclusive upon all Depositors, as to all acts and things so certified to have been done by the Committee. The Committee from time to time may make, alter and rescind such rules and regulations for the transaction of its business as it may deem advisable.

The Committee may appoint such sub-depositaries and registrars and may employ such counsel, agents and employees as in its opinion shall be necessary or useful, and may delegate any power or authority as well as discretion. If the Committee shall appoint any sub-depositaries, it may make such regulations with respect to their duties and functions as to it shall seem advisable, and may provide that any Certificate of Deposit issued by any sub-depositary shall be transferable at the office of the Depositary as well as at the office of the sub-depositary issuing the same.

15. The deposited stock and any stock of the New Company received by the Committee shall be held by the Depositary and any sub-depositary or agent for the Depositary subject to the orders of the Committee, and neither the Depositary nor any sub-depositary or agent for the Deposi-

tary shall incur any liability for anything done or permitted to be done at the request or direction of the Committee. The Depositary and any sub-depositary or agent for the Depositary shall be bound to exercise only reasonable care in the safekeeping of the deposited stock and of any other securities or cash which may be deposited with or held by them hereunder respectively, and to deal there-
[fol. 38] with in accordance with the directions of the Committee.

The Depositary or any sub-depositary may resign upon thirty days' notice in writing to the Committee, and the Committee shall have power to remove the Depositary or any sub-depositary and from time to time in its discretion to fill any vacancy however arising in the office of the Depositary or any sub-depositary. In the event of the resignation or removal of the Depositary or any sub-depositary, it shall deliver all cash, securities, property and records held by it hereunder as directed by the Committee.

16. The enumeration of specific powers herein conferred upon the Committee shall not be construed to limit or to restrict general powers herein conferred or intended so to be, and it is hereby declared that it is intended to confer upon the Committee in respect of all deposited stock and in all other respects any and all powers which the Committee may deem expedient for carrying out or promoting the purposes of the Plan and this Agreement in any respect, even though any such power be apparently of a character not now contemplated; and the Committee may exercise any and every such power as fully and effectively as if the same were herein distinctly specified and as often as for any reason it may deem expedient.

17. No statement contained in the Plan or in this Agreement, or in any document, circular letter, notice or communication at any time issued or published by the Committee, by the Depositary, by any sub-depositary or agent for the Depositary, by the Raybestos Company, by the Manhattan Company, by the United States Company, by the New Company or by any officer or attorney of any of said
[fol. 39] corporations or by any other person, is intended to be, or is to be accepted as, a representation or warranty or a condition of the Plan or this Agreement; and no error, defect or irregularity herein or therein, or in any such docu-

ment, circular letter, notice or communication, shall release any Depositor, or affect or release any deposit hereunder, except by written consent of the Committee.

18. The Plan and this Agreement shall bind and benefit the several parties hereto, and each and all the survivors, heirs, executors, administrators and assigns of said parties, and of each of them. The rights of the Depositors shall be such only as are conferred by the Plan and this Agreement and shall be subject to compliance by the Depositors with the terms and conditions set forth therein and herein.

19. This Agreement may be executed in several counterparts and all such counterparts shall be taken together as forming one agreement. Upon the execution of this Agreement by the members of the Committee or a majority of them, an executed counterpart shall be deposited with the Depositary.

In witness whereof, the members of the Committee have executed this Agreement and the Depositors have become parties hereto by depositing their certificates of stock hereunder, as above set forth, all as of the date first above recited.

Sumner Simpson, Clifford Hemphill, William T. Hincks, Committee.

[fol. 40] EXHIBIT "C" TO PETITION

United States Asbestos Company

Office of the President

To holders of common stock of the United States Asbestos Company:

Representatives of your Company and of The Raybestos Company, a Connecticut corporation, and The Manhattan Rubber Manufacturing Company, a New Jersey corporation, have developed a plan for combining the businesses of such companies. Such plan, it is believed, will prove of great advantage to the business and stockholders of all three companies. Under this plan, described in the accompanying "Plan and Agreement" to which you are

referred, it is contemplated that a corporation (hereinafter called "the New Company") will acquire, directly or indirectly, by purchase, merger, consolidation or otherwise, all of the assets of the three companies, and will assume all of their obligations and liabilities.

The New Company is to have an authorized capital consisting of 1,000,000 shares without par value, of which it is planned to issue 631,012 shares in replacement of the shares of stock of United States Asbestos Company, The Raybestos Company, and The Manhattan Rubber Manufacturing Company. Prior to the consummation of the Plan the outstanding issues of Preferred Stock of The Raybestos Company and the United States Asbestos Company will be called for redemption. The holders of Common Stock of the three companies will receive Common [fol. 41] Stock of the New Company in replacement of their present stock on the following basis:

	Shares of Common Stock now outstanding	Shares of Common Stock of New Company
1-14/100 shares of stock of the New Company for each share of Common Stock of United States Asbestos Company.	100,000 (no par value) (United States Asbestos Company).	114,000
2-25/100 shares of stock of the New Company for each share of Common Stock of The Raybestos Company.	118,672 ($25. par value) (The Raybestos Company)	267,012
1-25/100 shares of stock of the New Company for each share of stock of The Manhattan Rubber Manufacturing Company.	200,000 ($25. par value) (The Manhattan Rubber Manufacturing Company).	250,000

An additional 45,000 shares of Common Stock of the New Company is also to be sold for cash to replace funds required for the retirement of Preferred Stock of existing companies and for the general purposes of the New Company.

Upon the consummation of the Plan the New Company will have no funded debt and no preferred stock and will have ample working capital. Combined earnings of the three companies for 1928 available for dividends, as shown by their audited statements, amounted to $2,465,586, equivalent to $3.65 per share for the year 1928 on the stock of

the New Company which will be outstanding upon the consummation of the Plan. Combined earnings for the first quarter of 1929, as reported by the three companies, amounted to $888,417, equivalent to $1.31 per share for such quarter on such stock. It is expected that the New Company will inaugurate a dividend policy resulting in a return to each stockholder on his holdings in the New Company not less than the dividend return on his holdings of [fol. 42] common stock in the present company.

It is believed that combining the business of the three companies will bring about substantial economies both in manufacturing and selling expenses. The combined business will also make a better rounded and more complete industrial unit. With a view of furnishing the stockholders a wider market for their holdings, application will be made to list the stock of the New Company on the New York Stock Exchange.

Messrs. Zimmerman, Weber and Atkins of your Board of Diretcors will serve as a Committee to receive deposits of stock under the Plan and have caused to be prepared the Plan and Agreement under which such deposit may be made. Depositors will not be called upon to pay any compensation or expenses of the Committee or any other expenses.

Holders of more than a majority of the Common Stock of your Company and holders of more than a majority of the common stock of each of the other two companies have already approved the Plan and have agreed to deposit their stock. Prompt cooperation by all stockholders in the deposit of their stock will greatly facilitate the consummation of the Plan, and is necessary to assure participation in the Plan.

As provided in the Agreement the registered holders of Certificates of Deposit will receive dividends paid on the deposited stock pending the consummation of the Plan. Upon deposit of the stock the Depositary will issue Certificates of Deposit which will be transferable in the same way as the stock certificates. Application will be made to admit such Certificates of Deposit to trading on the New York Curb Market.

[fols. 43 & 44] Deposited stock certificates must be duly endorsed in blank for transfer or accompanied by duly executed stock powers and signatures must be guaranteed

by a New York City Bank or Trust Company or a bank or trust company having a New York City correspondent or by a New York Stock Exchange firm. Transfer tax stamps need not be attached, except where it is requested that a Certificate of Deposit be issued in the name of someone other than the holder of record of the deposited stock. Stockholders should forward their stock certificates with the enclosed letter of transmittal immediately to Chemical Bank & Trust Company, 165 Broadway, New York City, Depositary. For the convenience of stockholders arrangements have been made whereby The Lancaster Trust Company, Lancaster, Pennsylvania, will forward to the Depositary any stock delivered to it for that purpose.

Deposit of stock will constitute assent to the Plan and Agreement. If the Plan should fail of consummation because of insufficient deposited stock or otherwise, the deposited stock will be returned to the depositors without charge.

The Committee has fixed June 17, 1929, as the last day for making deposits under the Plan.

The Board of Directors of your company by a resolution unanimously adopted have recommended that the Common Stockholders of the company deposit their stock under the Plan. On behalf of the Board of Directors and as President of your company I recommend that you promptly deposit your stock.

S. R. Zimmerman, President.

May 22, 1929.

Note: Requests for further information should be addressed to the Secretary of the Committee, Robert W. Atkins, 25 Broad Street, New York City.

[fols. 45 & 46] United States Asbestos Company. Common Stock. Plan and Agreement Dated May 22, 1929. S. R. Zimmerman, George R. Weber, Robert W. Atkins, Committee. Robert W. Atkins, Secretary, 25 Broad Street, New York City. Depositary, Chemical Bank & Trust Company, New York City, N. Y.

[fol. 47] Plan

It is proposed that all of the business and assets of United States Asbestos Company, a Pennsylvania corpora-

tion (herein and in the annexed Agreement called "the United States Company"), The Raybestos Company, a Connecticut corporation (herein and in the annexed Agreement called "the Raybestos Company"), and The Manhattan Rubber Manufacturing Company, a New Jersey corporation (herein and in the annexed Agreement called "the Manhattan Company"), shall be acquired directly or indirectly, by purchase, merger, consolidation, or otherwise, by a corporation (herein and in the annexed Agreement called "the New Company"), the New Company to assume all of the liabilities and obligations of the United States Company, the Raybestos Company, and the Manhattan Company.

The New Company shall have an authorized capital of 1,000,000 shares of common stock, without par value, and may be a new corporation organized under the laws of any state selected by the Committee constituted by the Agreement annexed hereto or, at the election of such Committee, the New Company may be any one of the above-named companies with appropriate change of its present capital structure and charter.

The stock holders of the above-named companies are to receive stock of the New Company on the following basis:

1-14/100 shares of common stock of the New Company for each share of common stock of the United States Company.

[fol. 48] 2¼ shares of common stock of the New Company for each share of common stock of the Raybestos Company.

1¼ shares of common stock of the New Company for each share of stock of the Manhattan Company.

In lieu of any fraction of a share of common stock of the New Company deliverable to any stockholder of any of the above-named companies, there will be issued non-voting and non-dividend bearing common stock scrip, exchangeable, in amounts calling for one or more full shares, for a certificate of such share or shares.

On the above basis, there will be required for distribution to the common stockholders of the United States Company, the Raybestos Company, and the Manhattan Company an aggregate of 631,012 shares of common stock of the New Company. The New Company will sell a further

45,000 shares of such stock for cash to provide additional capital.

Prior to the consummation of the Plan, the preferred stocks of the United States Company and the Raybestos Company will be called for redemption.

The Committee constituted by the annexed Agreement shall have full discretion as to the method of carrying the Plan into effect and the legal procedure incident thereto and also as to the amount of stock of the United States Company which must be deposited under this Plan and the annexed Agreement in order to make the consummation of the Plan practicable.

[fol. 49] Agreement

Agreement, dated May 22, 1929, by and between S. R. Zimmerman, George R. Weber and Robert W. Atkins (hereinafter called the "Committee"), parties of the first part, and such holders of Common Stock of United States Asbestos Company, a Pennsylvania corporation (hereinafter called "the United States Company"), as shall become parties hereto in the manner hereinafter provided and their successors in interest (hereinafter collectively called "the Depositors"), parties of the second part:

In consideration of the consent and undertaking of the Committee to act as such in behalf of the Depositors as hereinafter set forth, and of the mutual agreements herein contained, and for other good and valuable considerations, the parties hereto agree, each Depositor agreeing with each of the other Depositors and with the Committee, as follows:

1. The Depositors hereby constitute and apppoint S. R. Zimmerman, George R. Weber and Robert W. Atkins a Committee, with all of the powers, rights and privileges by this Agreement conferred upon the Committee.

2. The accompanying Plan is and shall be taken to be a part of this Agreement, with the same effect as though each and every provision thereof had been embodied herein, and said Plan and this Agreement shall be read as parts of one and the same instrument.

3. Holders of Common Stock of the United States Company may become parties hereto by depositing the certificates representing such stock hereunder with the Deposi-

tary hereinafter in paragraph 4 designated or with any sub-depositary appointed as hereinafter provided, on or before the close of business on June 17, 1929, or such later [fol. 50] date as the Committee from time to time may fix as hereinafter provided. Each stock certificate so deposited must be duly endorsed in blank for transfer or accompanied by a duly executed stock power in form approved by the Committee and must be accompanied by such evidence as the Committee may in any case require of the genuineness and sufficiency of such endorsement or stock power. Except where it is requested that a Certificate of Deposit be issued in the name of someone other than the record holder of the stock deposited transfer tax stamps need not be attached, the cost of any such stamps which may be required to be affixed being part of the expenses of the Committee under the Plan and this Agreement. Every stockholder who shall so deposit his stock certificate or certificates shall be held to have assented to, and shall be bound by the provisions of, the Plan and this Agreement in the same manner and with the same effect as if he had executed the same.

The Committee shall have full power in its discretion from time to time, in general or in particular instances, and upon such general or special terms and conditions as it may see fit, to extend the time for the making of deposits under the Plan and this Agreement, and to accept the deposit of any of such stock under the Plan and this Agreement after the period at any time limited for such deposit shall have elapsed.

4. Upon depositing his stock as aforesaid, each Depositor will receive a Certificate or Certificates of Deposit in the name of the Depositor, specifying the number of shares deposited and reciting that such stock has been deposited hereunder, and otherwise in such form as shall be prescribed by the Committee, signed by the Depositary hereinafter designated or a sub-depositary appointed as herein- [fol. 51] after provided, and registered by the appropriate Registrar.

The Committee hereby appoints Chemical Bank & Trust Company, New York City, N. Y., Depositary of the Committee and hereby appoints The Equitable Trust Company of New York, New York City, N. Y., Registrar to register Certificates of Deposit signed by the Depositary.

The Depositary shall keep at its office books (which shall be deemed books of the Committee) and shall record in such books the names and addresses (as furnished) of all persons to whom Certificates of Deposit are issued by the Depositary and shall likewise record in such books all transfers of Certificates of Deposit made by the Depositary.

The interests represented by the Certificates of Deposit issued hereunder shall be transferable, subject to the terms and conditions of the Plan and this Agreement, on the books of the Committee by the holders thereof in person or by duly authorized attorney upon surrender of such Certificates of Deposit, properly endorsed, accompanied with any transfer tax stamps required by law. Thereupon a new Certificate or Certificates of Deposit, registered in the name of the transferee, shall be issued. Each transferee of any Certificate of Deposit shall be deemed to be a Depositor and shall be a party to this Agreement, and, as such, entitled to the same rights and privileges, and in every way as fully bound by and subject to the Plan and this Agreement, as the original Depositor.

Title to the Certificates of Deposit, when duly endorsed, shall be transferable, to the extent permitted by law, with the same effect as in the case of negotiable instruments. [fol. 52] Each holder of a Certificate of Deposit by acceptance thereof shall be deemed to consent and agree that delivery by any bearer thereof of such Certificate of Deposit, duly endorsed in blank, shall vest the title thereto and all rights and interests represented thereby in the transferee to the same extent, for all purposes, as would delivery under like circumstances of a negotiable instrument payable to bearer; provided, however, that the Depositary and any sub-depositary and any agent for the Depositary and the Committee may treat the record holder of any Certificate of Deposit (or, when presented duly endorsed in blank, the bearer thereof) as the absolute owner thereof for all purposes, and shall not be affected by any notice to the contrary.

The Committee may make provision for the replacement of any Certificates of Deposit which shall be lost, stolen or destroyed or which shall become mutilated.

5. The Committee is hereby authorized and empowered to construe the Plan and this Agreement, and the Com-

mittee's construction of the same, made in good faith, shall be final, conclusive and binding. The Committee may supply any defect or omission in the Plan and this Agreement and reconcile any inconsistency therein.

6. Each and every Depositor hereby authorizes and requests the Committee, as the Depositor's agent and attorney-in-fact, to endeavor to carry the Plan into practical operation, in such form and in such manner and by such steps as the Committee in its uncontrolled discretion shall deem best, and for this purpose the Committee is empowered hereby to exercise all the rights of the Depositors with respect to the deposited stock. The methods to be adopted in carrying out the Plan and this Agreement shall be en- [fol. 53] tirely discretionary with the Committee and the Plan and this Agreement are in all respects to be liberally construed so as to enable the Committee to carry into effect the purposes of the Plan.

The deposit of shares of stock in accordance with the provisions of the Plan and this Agreement shall not constitute an assignment thereof, but the title to the deposited stock shall remain in the Depositors thereof unless and until the Committee shall elect to take title thereto and file with the Depositary a certified copy of its resolution so electing, whereupon title thereto shall vest in the Committee as joint tenants and not as tenants in common, and in the survivor or survivors of the Committee and their successors, or, at the option of the Committee, expressed in such resolution, in its nominee or nominees. The Depositors severally agree that, at any time when the Committee shall have elected to take title to the deposited stock, they will execute and deliver any and all further transfers and assignments or other writings requested by the Committee in order more effectively to vest the ownership of the deposited stock in the Committee, its nominee or nominees. Unless and until the Committee shall so elect to take title thereto and file with the Depositary a certified copy of its resolution so electing, any and all directions to the Depositary respecting any such shares of stock, and any and all disposition by the Committee of any such shares of stock, and any and all action of the Committee with respect to any such shares of stock, shall be as the irrevocable agent and attorney-in-fact of the Depositors.

7. The Committee may take any and all steps and proceedings, and do any and all acts and things, and execute and deliver any and all documents, which it shall deem [fol. 54] necessary, expedient or desirable for the purpose of carrying out the Plan and this Agreement, or for the purpose of asserting, protecting or enforcing the rights or interests of the Depositors, or for any other purpose thereof. Without prejudice to the general powers herein granted, the Committee, for the purpose of carrying out the Plan and this Agreement, may procure the organization of one or more new corporations under such name as it shall determine or may adopt or use any existing or future corporations with such change of name, if any, as it shall determine, and, with respect to the United States Company or its assets and business, may make or cause to be made such consolidations, mergers, purchases, sales or other arrangements, and may cause to be made such charter amendments and changes in capital structure, and may take such other steps, as the Committee may deem advisable; and may form or procure the formation of any syndicate or syndicates, of which the Committee, or any member or members thereof, acting alone or in association with others, may be the manager or managers. The Committee, in its discretion, may leave undisturbed the rights of stockholders of the United States Company who do not deposit their stock under the Plan and this Agreement, or may make or approve such provision for such stockholders as the Committee may deem expedient.

Without prejudice as aforesaid, the Depositors hereby severally irrevocably authorize and empower the Committee (as the holder of the deposited stock, provided the Committee shall have taken title thereto as hereinabove permitted, or otherwise as the attorney and/or proxy of the Depositors) to call or waive notice of, and to attend in person or by proxy or substitute proxy or by proxy appointed [fol. 55] by the Committee as the agent and attorney-in-fact of the Depositors, any and all meetings of stockholders of the United States Company and to vote or cause to be voted, or to consent with respect to, any or all of the deposited stock in any manner and for any purpose deemed by the Committee to be advisable for the carrying out of the Plan and this Agreement, expressly including among such purposes the amendment of the charter of the United

States Company in any manner which the Committee, being advised by counsel, shall deem advisable to facilitate the consummation of the Plan, and any transfer or conveyance of assets contemplated thereby; and the Depositors hereby severally irrevocably authorize and empower the Committee, with respect to any stock of the New Company received by the Committee (until the same shall have been distributed, as contemplated by the Plan, to the Depositors entitled ultimately to receive the same), to deal with such stock as the irrevocable agent and attorney-in-fact of the Depositors, and to call or waive notice of and to attend in person or by proxy or substitute proxy or by proxy appointed by the Committee as the agent and attorney-in-fact of the Depositors, any and all meetings of stockholders of the New Company and to vote or cause to be voted, or to consent with respect to, any or all of such stock in any manner and for any purpose deemed by the Committee to be advisable for the carrying out of the Plan. The Committee is authorized and empowered as attorney-in-fact of each and every of the Depositors to execute, for and in the name of the Depositors or in the name of the Committee, any and all proxies, waivers, consents or other documents deemed by the Committee desirable to facilitate the consummation of the Plan.

[fol. 56] No expense incurred by, or compensation of, the Committee or any other expenses shall be charged against the Depositors or against any of the deposited stock, the United States Company having agreed to pay the same.

8. The Depositors hereby severally irrevocably authorize and empower the Committee to receive, and irrevocably authorize and direct the United States Company and the New Company to pay to or on the order of the Committee all dividends paid on the deposited stock so long as it shall remain on deposit hereunder or on stock of the New Company received by the Committee (until the same shall have been distributed, as contemplated by the Plan, to the Depositors entitled ultimately to receive the same). When and as any dividends shall be receivable by the Committee on deposited stock or on such stock of the New Company, the Committee will direct the United States Company or the New Company, as the case may be, to pay the same to the persons who on the books of the Committee to be kept by the Depositary shall be the record holders of Certificates

of Deposit representing such stock at the close of business on the date as of which the United States Company or the New Company determines its recorded stockholders entitled to receive such dividend; such payments to be made to the holders of such Certificates of Deposit ratably according to the number of deposited shares represented by such Certificates respectively.

9. Upon compliance with all the terms and conditions of the Plan and this Agreement, Depositors will be entitled to receive, upon the consummation of the Plan, and upon surrender of their Certificates of Deposit, the stock, and scrip for fractions of shares of stock, of the New Company (but only as and when issued and ready for relivery) to which only as and when issued and ready for delivery) to which [fol. 57] they shall be entitled pursuant to the terms and provisions of the Plan and this Agreement.

The Committee, subject to the provisions of this Agreement, is authorized and empowered to prescribe terms and conditions as to the surrender of Certificates of Deposit with which holders of Certificates of Deposit must comply in order to receive the stock, and scrip for fractions of shares of stock, of the New Company receivable by the Depositors under the Plan, and for the purpose of facilitating the delivery thereof, the Committee may order the books of the Committee for the transfer of Certificates of Deposit to be permanently closed against the making of transfers upon a date not less than ten days after mailing notice of such closing of the books to the Depositors in accordance with the provisions of Section 13 hereof.

The Depositors hereby severally irrevocably authorize and empower the Committee, upon and after any transfer of the business and assets of the United States Company to the New Company in accordance with the Plan, to take such action or initiate or participate in such proceedings by way of disposing of, extinguishing or otherwise dealing with the deposited stock of the United States Company as the Committee in its discretion shall determine.

10. The Committee may abandon the Plan at any time if in its discretion the Committee shall deem it impracticable to carry the same into execution. Such abandonment shall be effected by resolution of the Committee, and notice thereof shall be lodged with the Depositary, and mailed to the Depositors in accordance with the provisions

of Section 13 hereof. Thereafter any Depositor may withdraw the stock of the United States Company represented [fol. 58] by his Certificate of Deposit. In the absence of such notice of abandonment no Depositor may withdraw stock of the United States Company represented by his Certificate of Deposit or withdraw from this Agreement prior to June 1, 1930. If the Plan shall not have been carried into execution by that date, any Depositor may thereafter withdraw the stock of the United States Company represented by his Certificate of Deposit.

The Committee, subject to the provisions of this Agreement, is authorized and empowered to make reasonable regulations as to the procedure to be followed by holders of Certificates of Deposit in withdrawing, in either of the events aforesaid, the stock of the United States Company represented by their Certificates of Deposit, and for the purpose of facilitating delivery of such stock the Committee may order the books for the transfer of Certificates of Deposit to be permanently closed against the making of transfers upon a date not less than ten days after mailing notice of such closing of the books to the Depositors in accordance with the provisions of Section 13 hereof.

11. Every holder of a Certificate of Deposit, by the surrender thereof to the Committee and the receipt of certificates representing the deposited stock, or the stock, and scrip for fractions of shares of stock, of the New Company, deliverable to him hereunder, shall be deemed to have released and discharged the Committee, the Depositary and all other persons from all liability and accountability of any and every kind hereunder.

After the books for the transfer of Certificates of Deposit shall have been closed against the making of transfers (whether upon the consummation of the Plan or upon [fol. 59] its abandonment) the Committee, whenever there shall be lodged with the Depositary

(a) in case the Plan shall have been consummated, the stock, and scrip for fractions of shares of stock, of the New Company which Depositors holding outstanding Certificates of Deposit shall be entitled to receive under the Plan and this Agreement, or

(b) in case the Plan shall have been abandoned, the stock of the United States Company represented by the outstanding Certificates of Deposit,

may instruct the Depositary to hold the stock, and scrip for fractions of shares of stock, of the New Company, or the stock of the United States Company, as the case may be, so lodged with it for the holders of outstanding Certificates of Deposit and to distribute the same to such holders upon surrender to it of their Certificates of Deposit; and, such stock having been so lodged and such instructions so given, the Committee shall be under no responsibility to the Depositors, and the rights of the Depositors shall be limited to receiving from the Depositary the stock, and scrip for fractions of shares of stock, of the New Company, or the stock of the United States Company, as the case may be, so held by the Depositary.

12. Neither the Committee nor the Depositary nor any sub-depositary nor any agent for the Depositary is to be under any obligation, legal or equitable, express or implied, to any holder of stock of the United States Company who shall not deposit the same hereunder, or to any person whomsoever, other than the holders of Certificates of Deposit issued in accordance with the terms hereof. With respect to the holders of such Certificates of Deposit, the [fol. 60] Committee undertakes to endeavor in good faith to carry out the Plan and this Agreement, but neither the Committee nor any member thereof nor the Depositary nor any sub-depositary nor any agent for the Depositary assumes any responsibility for the carrying out of the Plan and this Agreement or for the result of any steps taken or acts done for the purpose thereof. Neither the Committee nor any member thereof nor the Depositary nor any sub-depositary nor any agent for the Depositary shall be liable for any act or omission of any attorney, agent or employee, nor for anything except for his or its own willful misconduct. Neither the Depositary nor any sub-depositary, by the delivery of any Certificate of Deposit hereunder, makes any representation or warranty of any sort whatsoever other than that it agrees to use its best judgment and good faith in the performance of its duties hereunder, and by the acceptance of any such Certificate of Deposit every holder expressly relieves the Depositary and each and every sub-depositary of any liability except as aforesaid. Neither the Committee nor any member thereof nor the Depositary nor any sub-depositary nor any agent for the Depositary assumes any responsibility or liability as to the genuineness,

validity or regularity of any of the stock, or scrip for fractions of shares of stock, of the New Company created or issued in connection herewith, or as to the validity or sufficiency of any corporate proceedings or acts of the United States Company, the Raybestos Company, the Manhattan Company, or the New Company.

Any member of the Committee or any corporation, association or partnership of which any member of the Committee may be an officer, director, member or partner, or [fol. 61] the Depositary or any sub-depositary or agent for the Depositary or any officer or director of any of them, may be or become pecuniarily interested in any stock, Certificates of Deposit, subscription rights, contracts, property or matters which the Plan or this Agreement concerns, and may participate in any underwriting syndicate as syndicate manager, syndicate subscriber, or otherwise, and may be an officer or director of the United States Company or of the Raybestos Company or of the Manhattan Company or of the New Company. The Depositary or any sub-depositary or agent for the Depositary may be trustee under any agreement created or entered into in connection with the Plan, or otherwise act in any manner for the United States Company or for the Raybestos Company or for the Manhattan Company or for the New Company or for the holders of any of the stock of any of such corporations.

13. Any notice or other communication required or permitted by the provisions hereof to be sent to any Depositor shall be conclusively deemed to have been duly communicated if and when deposited in the United States mail, postpaid, addressed to such Depositor at his address appearing upon the books of the Committee kept by the Depositary.

An affidavit made before a notary public by the Secretary of the Committee, or by an officer or employee of the Depositary, with respect to the mailing of notices herein provided for shall be conclusive evidence of the giving of such notices.

14. The Committee, as from time to time constituted and notwithstanding any vacancy, shall have all the powers, rights and interests of the Committee as named in this Agreement. The Committee may elect a Chairman, and [fol. 62] may appoint a Secretary (who may, but need not, be a member of the Committee) who shall keep a record of its acts and proceedings. From time to time the Commit-

tee may choose such other officers and designate or cause to be designated such committees or sub-committees (whose members may, but need not, be members of the Committee) as it may see fit, and may confer upon any of its officers, committees or sub-committees such powers as it may deem advisable. The Committee from time to time may add to its number by electing, by a majority vote of its then members, an additional member or members, and the member or members so elected shall have all the powers, rights and interests of the members of the Committee under the Plan and this Agreement and, together with those herein named or their successors, shall constitute the Committee under the Plan and this Agreement with like force and effect as though they were specifically named herein. Any member of the Committee may resign by filing written notice of his resignation with the Chairman or Secretary of the Committee. In case at any time a vacancy shall occur in the Committee by death or resignation, or from any other cause, such vacancy may, but need not, be filled by a majority of the then members of the Committee. Notices of changes in the membership of the Committee filed with the Depositary shall bind all parties hereto.

A majority of the members of the Committee shall constitute a quorum for all purposes, and all the powers of the Committee may be exercised by a majority of its then members either at a meeting, or in writing or by telegraph, wireless or cable without a meeting. A member of the Committee by written proxy may authorize any person (who [fol. 63] may, but need not, be another member of the Committee) to act in his place for any and all purposes. The certificate of the Chairman or Secretary as to any action by the Committee shall be conclusive upon and full protection to the Depositary and all sub-depositaries and agents for the Depositary and all other persons, and conclusive upon all Depositors, as to all acts and things so certified to have been done by the Committee. The Committee from time to time may make, alter and rescind such rules and regulations for the transaction of its business as it may deem advisable.

The Committee may appoint such sub-depositaries and registrars and may employ such counsel, agents and employees as in its opinion shall be necessary or useful, and may delegate any power or authority as well as discretion. If the Committee shall appoint any sub-depositaries, it may make such regulations with respect to their duties

and functions as to it shall seem advisable, and may provide that any Certificate of Deposit issued by any sub-depositary shall be transferable at the office of the Depositary as well as at the office of the sub-depositary issuing the same.

15. The deposited stock and any stock of the New Company received by the Committee shall be held by the Depositary and any sub-depositary or agent for the Depositary subject to the orders of the Committee, and neither the Depositary nor any sub-depositary or agent for the Depositary shall incur any liability for anything done or permitted to be done at the request or direction of the Committee. The Depositary and any sub-depositary or agent for the Depositary shall be bound to exercise only reasonable care in the safekeeping of the deposited stock and of any other securities or cash which may be deposited with or [fol. 64] held by them hereunder respectively, and to deal therewith in accordance with the directions of the Committee.

The Depositary or any sub-depositary may resign upon thirty days' notice in writing to the Committee, and the Committee shall have power to remove the Depositary or any sub-depositary and from time to time in its discretion to fill any vacancy however arising in the office of the Depositary or any sub-depositary. In the event of the resignation or removal of the Depositary or any sub-depositary, it shall deliver all cash, securities, property and records held by it hereunder as directed by the Committee.

16. The enumeration of specific powers herein conferred upon the Committee shall not be construed to limit or to restrict general powers herein conferred or intended so to be, and it is hereby declared that it is intended to confer upon the Committee in respect of all deposited stock and in all other respects any and all powers which the Committee may deem expedient for carrying out or promoting the purposes of the Plan and this Agreement in any respect, even though any such power be apparently of a character not now contemplated; and the Committee may exercise any and every such power as fully and effectively as if the same were herein distinctly specified and as often as for any reason it may deem expedient.

17. No statement contained in the Plan or in this Agreement, or in any document, circular letter, notice or com-

munication at any time issued or published by the Committee, by the Depositary, by any sub-depositary or agent for the Depositary, by the United States Company, by the Raybestos Company, by the Manhattan Company, by the [fol. 65] New Company or by any officer or attorney of any of said corporations or by any other person, is intended to be, or is to be accepted as, a representation or warranty or a condition of the Plan or this Agreement; and no error, defect or irregularity herein or therein, or in any such document, circular letter, notice or communication, shall release any Depositor, or affect or release any deposit hereunder, except by written consent of the Committee.

18. The Plan and this Agreement shall bind and benefit the several parties hereto, and each and all the survivors, heirs, executors, administrators and assigns of said parties, and of each of them. The rights of the Depositors shall be such only as are conferred by the Plan and this Agreement and shall be subject to compliance by the Depositors with the terms and conditions set forth therein and herein.

19. This Agreement may be executed in several counterparts and all such counterparts shall be taken together as forming one agreement. Upon the execution of this Agreement by the members of the Committee or a majority of them, an executed counterpart shall be deposited with the Depositary.

In Witness Whereof, the members of the Committee have executed this Agreement and the Depositors have become parties hereto by depositing their certificates of stock hereunder, as above set forth, all as of the date first above recited.

S. R. Zimmerman, George R. Weber, Robert W. Atkins, Committee.

[fol. 66] EXHIBIT "D" TO PETITION

The Manhattan Rubber Manufacturing Company

Office of the President

To holders of stock of The Manhattan Rubber Manufacturing Company:

Representatives of your Company and of The Raybestos Company, a Connecticut corporation, and United States

Asbestos Company, a Pennsylvania corporation, have developed a plan for combining the businesses of such companies. Such plan, it is believed, will prove of great advantage to the business and stockholders of all three companies. Under this plan, described in the accompanying "Plan and Agreement" to which you are referred, it is contemplated that a corporation (hereinafter called "the New Company") will acquire, directly or indirectly, by purchase, merger, consolidation or otherwise, all of the assets of the three companies, and will assume all of their obligations and liabilities.

The New Company is to have an authorized capital consisting of 1,000,000 shares without par value, of which it is planned to issue 631,012 shares in replacement of the shares of stock of The Manhattan Rubber Manufacturing Company, The Raybestos Company, and United States Asbestos Company. Prior to the consummation of the Plan the outstanding issues of Preferred Stock of The Raybestos Company and United States Asbestos Company will be called for redemption. The holders of Common Stock of the three companies will receive Common Stock of the [fol. 67] New Company in replacement of their present stock on the following basis:

	Shares of Common Stock Now Outstanding	Shares of Common Stock of New Company
1-25/100 shares of stock of the New Company for each share of stock of The Manhattan Rubber Manufacturing Company.	200,000 ($25 par value) (The Manhattan Rubber Manufacturing Company).	250,000
2-25/100 shares of stock of the New Company for each share of Common Stock of The Raybestos Company.	118,672 ($25 par value) (The Raybestos Company).	267,012
1-14/100 shares of stock of the New Company for each share of Common Stock of United States Asbestos Company.	100,000 (no par value) (United States Asbestos Company).	114,000

An additional 45,000 shares of Common Stock of the New Company is also to be sold for cash to replace funds required for the retirement of Preferred Stock of existing companies and for the general purposes of the New Company.

Upon the consummation of the Plan the New Company will have no funded debt and no preferred stock and will

have ample working capital. Combined earnings of the three companies for 1928 available for dividends, as shown by their audited statements, amounted to $2,465,586, equivalent to $3.65 per share for the year 1928 on the stock of the New Company which will be outstanding upon the consummation of the Plan. Combined earnings for the first quarter of 1929, as reported by the three companies, amounted to $888,417, equivalent to $1.31 per share for such quarter on such stock. It is expected that the New Company will inaugurate a dividend policy resulting in a return to each stockholder on his holdings in the New Company not less than the dividend return on his holdings in the present company.

[fol. 68] It is believed that combining the business of the three companies will bring about substantial economies both in manufacturing and selling expenses. The combined business will also make a better rounded and more complete industrial unit. With a view of furnishing the stockholders a wider market for their holdings, application will be made to list the stock of the New Company on the New York Stock Exchange.

Messrs. Townsend, Green and Curtis of your Board of Directors will serve as a Committee to receive deposits of stock under the Plan and have caused to be prepared the Plan and Agreement under which such deposit may be made. Depositors will not be called upon to pay any compensation or expenses of the Committee or any other expenses.

Holders of more than a majority of the stock of your Company and holders of more than a majority of the common stock of the other two companies have already approved the Plan and have agreed to deposit their stock. Prompt cooperation by all stockholders in the deposit of their stock will greatly facilitate the consummation of the Plan, and is necessary to assure participation in the Plan.

As provided in the Agreement the record holders of Certificates of Deposit will receive dividends paid on the deposited stock pending the consummation of the Plan. Upon deposit of the stock the Depositary will issue Certificates of Deposit which will be transferable in the same way as the stock certificates.

Deposited stock certificates must be duly endorsed in blank for transfer or accompanied by duly executed stock powers and signatures must be guaranteed by a bank or

trust company having an office or correspondent in Passaic, [fols. 69 & 70] New Jersey, or in the City of New York, or by a New York stock exchange firm. Transfer tax stamps need not be attached, except where it is requested that a Certificate of Deposit be issued in the name of someone other than the holder of record of the deposited stock. Stockholders should forward their stock certificates with the enclosed letter of transmittal immediately to Passaic National Bank and Trust Company, Passaic, New Jersey, Depositary.

Deposit of stock will constitute assent to the Plan and Agreement. If the Plan should fail of consummation because of insufficient deposited stock or otherwise, the deposited stock will be returned to the depositors without charge.

The Committee has fixed June 17, 1929, as the last day for making deposits under the Plan.

The Board of Directors of your company by a resolution unanimously adopted has recommended that the stockholders of the company deposit their stock under the Plan. On behalf of the Board of Directors and as President of your company I recommend that you promptly deposit your stock.

A. F. Townsend, President.

May 22, 1929.

NOTE: Requests for further information should be addressed to the Secretary of the Committee, Mr. F. L. Curtis, 61 Willett Street, Passaic, N. J.

[fols. 71 & 72] The Manhattan Rubber Manufacturing Company. Plan and Agreement, Dated May 22, 1929. A. F. Townsend, H. M. Green, F. L. Curtis, Committee. F. L. Curtis, Secretary, 61 Willett St., Passaic, N. J. Depositary, Passaic National Bank and Trust Company, Passaic, N. J.

[fol. 73] Plan

It is proposed that all of the business and assets of The Manhattan Rubber Manufacturing Company, a New Jersey corporation (herein and in the annexed Agreement called "the Manhattan Company"), The Raybestos Company, a Connecticut corporation (herein and in the annexed Agreement called "the Raybestos Company"), and United States Asbestos Company, a Pennsylvania corpo-

ration (herein and in the annexed Agreement called "the United States Company"), shall be acquired directly or indirectly, by purchase, merger, consolidation or otherwise, by a corporation (herein and in the annexed Agreement called "the New Company"), the New Company to assume all of the liabilities and obligations of the United States Company, the Raybestos Company and the Manhattan Company.

The New Company shall have an authorized capital of 1,000,000 shares of common stock, without par value, and may be a new corporation organized under the laws of any state selected by the Committee contsituted by the Agreement annexed hereto or, at the election of such Committee, the New Company may be any one of the above-named companies with appropriate change of its present capital structure and charter.

The stockholders of the above-named companies are to receive stock of the New Company on the following basis:

1¼ shares of common stock of the New Company for each share of stock of the Manhattan Company.

[fol. 74] 2¼ shares of common stock of the New Company for each share of common stock of the Raybestos Company.

1-14/100 shares of common stock of the New Company for each share of common stock of the United States Company.

In lieu of any fraction of a share of common stock of the New Company deliverable to any stockholder of any of the above-named companies, there will be issued non-voting and non-dividend-bearing common stock scrip, exchangeable, in amounts calling for one or more full shares, for a certificate for such share or shares.

On the above basis, there will be required for distribution to the common stockholders of the Manhattan Company, the Raybestos Company and United States Company, an aggregate of 631,012 shares of common stock of the New Company. The New Company will sell a further 45,000 shares of such stock for cash to provide additional capital.

Prior to the consummation of the Plan, the preferred stocks of the United States Company and the Raybestos Company will be called for redemption.

The Committee constituted by the annexed Agreement shall have full discretion as to the method of carrying the

Plan into effect and the legal procedure incident thereto and also as to the amount of stock of the Manhattan Company which must be deposited under this Plan and the annexed Agreement in order to make the consummation of the Plan practicable.

[fol. 75] Agreement

Agreement, dated May 22, 1929, by and between A. F. Townsend, H. M. Green and F. L. Curtis (hereinafter called the "Committee"), parties of the first part, and such holders of stock of The Manhattan Rubber Manufacturing Company, a New Jersey corporation (hereinafter called the "Manhattan Company"), as shall become parties hereto in the manner hereinafter provided and their successors in interest (hereinafter collectively called "the Depositors"), parties of the second part.

In consideration of the consent and undertaking of the Committee to act as such in behalf of the Depositors as hereinafter set forth, and of the mutual agreements herein contained, and for other good and valuable considerations, the parties hereto agree, each Depositor agreeing with each of the other Depositors and with the Committee, as follows:

1. The Depositors hereby constitute and appoint A. F. Townsend, H. M. Green and F. L. Curtis, a Committee, with all of the powers, rights and privileges by this Agreement conferred upon the Committee.

2. The accompanying Plan is and shall be taken to be a part of this Agreement, with the same effect as though each and every provision thereof had been embodied herein, and said Plan and this Agreement shall be read as parts of one and the same instrument.

3. Holders of stock of the Manhattan Company may become parties hereto by depositing the certificates representing such stock hereunder with the Depositary hereinafter in paragraph 4 designated or with any sub-depositary appointed as hereinafter provided, on or before the close of business on June 17, 1929, or such later date as the Committee from time to time may fix as hereinafter pro- [fol. 76] vided. Each stock certificate so deposited must be duly endorsed in blank for transfer or accompanied by a duly executed stock power in form approved by the

Committee, and must be accompanied by such evidence as the Committee may in any case require of the genuineness and sufficiency of such endorsement or stock power. Except where it is requested that a Certificate of Deposit be issued in the name of someone other than the record holder of the stock deposited, transfer tax stamps need not be attached, the cost of any such stamps which may be required to be affixed being part of the expenses of the Committee under the Plan and this Agreement. Every stockholder who shall so deposit his stock certificate or certificates shall be held to have assented to, and shall be bound by the provisions of, the Plan and this Agreement in the same manner and with the same effect as if he had executed the same.

The Committee shall have full power in its discretion from time to time, in general or in particular instances, and upon such general or special terms and conditions as it may see fit, to extend the time for the making of deposits under the Plan and this Agreement, and to accept the deposit of any of such stock under the Plan and this Agreement after the period at any time limited for such deposit shall have elapsed.

4. Upon depositing his stock as aforesaid, each Depositor will receive a Certificate or Certificates of Deposit in the name of the Depositor, specifying the number of shares deposited and reciting that such stock has been deposited hereunder, and otherwise in such form as shall be prescribed by the Committee, signed by the Depositary hereinafter designated or a sub-depositary appointed as hereinafter provided.

[fol. 77] The Committee hereby appoints Passaic National Bank and Trust Company, Passaic, N. J., Depositary of the Committee.

The Depositary shall keep at its office books (which shall be deemed books of the Committee) and shall record in such books the names and addresses (as furnished) of all persons to whom Certificates of Deposit are issued by the Depositary and shall likewise record in such books all transfers of Certificates of Deposit made by the Depositary.

The interests represented by the Certificates of Deposit issued hereunder shall be transferable, subject to the terms

and conditions of the Plan and this Agreement, on the books of the Committee by the holders thereof in person or by duly authorized attorney upon surrender of such Certificates of Deposit, properly endorsed, accompanied with any transfer tax stamps required by law. Thereupon a new Certificate or Certificates of Deposit, shall be issued in the name of the transferee. Each transferee of any Certificate of Deposit shall be deemed to be a Depositor and shall be a party to this Agreement, and, as such, entitled to the same rights and privileges, and in every way as fully bound by and subject to the Plan and this Agreement, as the original Depositor.

Title to the Certificates of Deposit, when duly endorsed, shall be transferable, to the extent permitted by law, with the same effect as in the case of negotiable instruments. Each holder of a Certificate of Deposit by acceptance thereof shall be deemed to consent and agree that delivery by any bearer thereof of such Certificate of Deposit, duly endorsed in blank, shall vest the title thereto and all rights and interests represented thereby in the transferee to the [fol. 78] same extent, for all purposes, as would delivery under like circumstances of a negotiable instrument payable to bearer; provided, however, that the Depositary and any sub-depositary and the Committee may treat the record holder of any Certificate of Deposit (or, when presented duly endorsed in blank, the bearer thereof) as the absolute owner thereof for all purposes, and shall not be affected by any notice to the contrary.

The Committee may make provision for the replacement of any Certificates of Deposit which shall be lost, stolen or destroyed or which shall become mutilated.

5. The Committee is hereby authorized and empowered to construe the Plan and this Agreement, and the Committee's construction of the same, made in good faith, shall be final, conclusive and binding. The Committee may supply any defect or omission in the Plan and this Agreement and reconcile any inconsistency therein.

6. Each and every Depositor hereby authorizes and requests the Committee, as the Depositor's agent and attorney-in-fact, to endeavor to carry the Plan into practical operation, in such form and in such manner and by such steps as the Committee in its uncontrolled discretion shall

deem best, and for this purpose the Committee is empowered hereby to exercise all the rights of the Depositors with respect to the deposited stock. The methods to be adopted in carrying out the Plan and this Agreement shall be entirely discretionary with the Committee and the Plan and this Agreement are in all respects to be liberally construed so as to enable the Committee to carry into effect the purposes of the Plan.

[fol. 79] The deposit of shares of stock in accordance with the provisions of the Plan and this Agreement shall not constitute an assignment thereof, but the title to the deposited stock shall remain in the Depositors thereof unless and until the Committee shall elect to take title thereto and file with the Depositary a certified copy of its resolution so electing, whereupon title thereto shall vest in the Committee as joint tenants and not as tenants in common, and in the survivor or survivors of the Committee and their successors, or at the option of the Committee, expressed in such resolution, in its nominee or nominees. The Depositors severally agree that, at any time when the Committee shall have elected to take title to the deposited stock, they will execute and deliver any and all further transfers and assignments or other writings requested by the Committee in order more effectively to vest the ownership of the deposited stock in the Committee, its nominee or nominees. Unless and until the Committee shall so elect to take title thereto and file with the Depositary a certified copy of its resolution so electing, any and all directions to the Depositary respecting any such shares of stock, and any and all disposition by the Committee of any such shares of stock, and any and all action of the Committee with respect to any such shares of stock, shall be as the irrevocable agent and attorney-in-fact of the Depositors.

7. The Committee may take any and all steps and proceedings, and do any and all acts and things, and execute and deliver any and all documents, which it shall deem necessary, expedient or desirable for the purpose of carrying out the Plan and this Agreement, or for the purpose of asserting, protecting or enforcing the rights or interests of the Depositors, or for any other purpose thereof. Without [fol. 80] prejudice to the general powers herein granted, the Committee, for the purpose of carrying out the Plan and this Agreement, may procure the organization of one

or more new corporations under such name as it shall determine or may adopt or use any existing or future corporations with such change of name, if any, as it shall determine, and, with respect to the Manhattan Company or its assets and business, may make or cause to be made such consolidations, mergers, purchases, sales or other arrangements, and may cause to be made such charter amendments and changes in capital structure, and may take such other steps, as the Committee may deem advisable; and may form or procure the formation of any syndicate or syndicates, of which the Committee, or any member or members thereof, acting alone or in association with others, may be the manager or managers. The Committee, in its discretion, may leave undisturbed the rights of stockholders of the Manhattan Company who do not deposit their stock under the Plan and this Agreement, or may make or approve such provisions for such stockholders as the Committee may deem expedient.

Without prejudice as aforesaid, the Depositors hereby severally irrevocably authorize and empower the Committee (as the holder of the deposited stock, provided the Committee shall have taken title thereto as hereinabove permitted, or otherwise as the attorney and/or proxy of the Depositors) to call or waive notice of, and to attend in person or by proxy or substitute proxy or by proxy appointed by the Committee as the agent and attorney-in-fact of the Depositors, any and all meetings of stockholders of the Manhattan Company and to vote or cause to be voted, or to consent with respect to, any or all of the deposited stock in [fol. 81] any manner and for any purpose deemed by the Committee to be advisable for the carrying out of the Plan and this Agreement, expressly including among such purposes the amendment of the charter of the Manhattan Company in any manner which the Committee, being advised by counsel, shall deem advisable to facilitate the consummation of the Plan, and any transfer or conveyance of assets contemplated thereby; and the Depositors hereby severally irrevocably authorize and empower the Committee, with respect to any stock of the New Company received by the Committee (until the same shall have been distributed, as contemplated by the Plan, to the Depositors entitled ultimately to receive the same), to deal with such stock as the irrevocable agent and attorney-in-fact of the Depositors, and to call or waive notice of and to attend in person or by

proxy or substitute proxy or by proxy appointed by the Committee as the agent and attorney-in-fact of the Depositors, any and all meetings of stockholders of the New Company and to vote or cause to be voted, or to consent with respect to, any or all of such stock in any manner and for any purpose deemed by the Committee to be advisable for the carrying out of the Plan. The Committee is authorized and empowered as Attorney-in-Fact of each and every of the Depositors to execute, for and in the name of the Depositors or in the name of the Committee, any and all proxies, waivers, consents and other documents deemed by the Committee desirable to facilitate the consummation of the Plan.

No expense incurred by, or compensation of, the Committee or any other expenses shall be charged against the Depositors or against any of the deposited stock, the Manhattan Company having agreed to pay the same.

[fol. 82] 8. The Depositors hereby severally irrevocably authorize and empower the Committee to receive, and irrevocably authorize and direct the Manhattan Company and the New Company to pay to or on the order of the Committee all dividends paid on the deposited stock so long as it shall remain on deposit hereunder or on stock of the New Company received by the Committee (until the same shall have been distributed, as contemplated by the Plan, to the Depositors entitled ultimately to receive the same). When and as any dividends shall be receivable by the Committee on deposited stock or on such stock of the New Company, the Committee will direct the Manhattan Company or the New Company, as the case may be, to pay the same to the persons who on the books of the Committee to be kept by the Depositary shall be the record holders of Certificates of Deposit representing such stock at the close of business on the date as of which the Manhattan Company or the New Company determines its recorded stockholders entitled to receive such dividend; such payments to be made to the holders of such Certificates of Deposit ratably according to the number of deposited shares represented by such Certificates respectively.

9. Upon compliance with all the terms and conditions of the Plan and this Agreement, Depositors will be entitled to receive, upon the consummation of the Plan, and upon surrender of their Certificates of Deposit, the stock, and

scrip for fractions of shares of stock, of the New Company (but only as and when issued and ready for delivery) to which they shall be entitled pursuant to the terms and provisions of the Plan and this Agreement.

The Committee, subject to the provisions of this Agreement, is authorized and empowered to prescribe terms and [fol. 83] conditions as to the surrender of Certificates of Deposit with which holders of Certificates of Deposit must comply in order to receive the stock, and scrip for fractions of shares of stock, of the New Company receivable by the Depositors under the Plan, and for the purpose of facilitating the delivery thereof, the Committee may order the books of the Committee for the transfer of Certificates of Deposit to be permanently closed against the making of transfers upon a date not less than ten days after mailing notice of such closing of the books to the Depositors in accordance with the provisions of Section 13 hereof.

The Depositors hereby severally irrevocably authorize and empower the Committee, upon and after any transfer of the business and assets of the Manhattan Company to the New Company in accordance with the Plan, to take such action or initiate or participate in such proceedings by way of disposing of, extinguishing or otherwise dealing with the deposited stock of the Manhattan Company as the Committee in its discretion shall determine.

10. The Committee may abandon the Plan at any time if in its discretion the Committee shall deem it impracticable to carry the same into execution. Such abandonment shall be effected by resolution of the Committee, and notice thereof shall be lodged with the Depositary, and mailed to the Depositors in accordance with the provisions of Section 13 hereof. Thereafter any Depositor may withdraw the stock of the Manhattan Company represented by his Certificate of Deposit. In the absence of such notice of abandonment no Depositor may withdraw stock of the Manhattan Company represented by his Cer- [fol. 84] tificate of Deposit or withdraw from this Agreement prior to June 1, 1930. If the Plan shall not have been carried into execution by that date, any Depositor may thereafter withdraw the stock of the Manhattan Company represented by his Certificate of Deposit.

The Committee, subject to the provisions of this Agreement, is authorized and empowered to make reasonable regulations as to the procedure to be followed by holders of Certificates of Deposit in withdrawing, in either of the events aforesaid, the stock of the Manhattan Company represented by their Certificates of Deposit, and for the purpose of facilitating delivery of such stock the Committee may order the books for the transfer of Certificates of Deposit to be permanently closed against the making of transfers upon a date not less than ten days after mailing notice of such closing of the books to the Depositors in accordance with the provisions of Section 13 hereof.

11. Every holder of a Certificate of Deposit, by the surrender thereof to the Committee and the receipt of certificates representing the deposited stock, or the stock, and scrip for fractions of shares of stock, of the New Company, deliverable to him hereunder, shall be deemed to have released and discharged the Committee, the Depositary and all other persons from all liability and accountability of any and every kind hereunder.

After the books for the transfer of Certificates of Deposit shall have been closed against the making of transfers (whether upon the consummation of the Plan or upon its abandonment) the Committee, whenever there shall be lodged with the Depositary

(a) in case the Plan shall have been consummated, the stock, and scrip for fractions of shares of stock, of the New [fol. 85] Company which Depositors holding outstanding Certificates of Deposit shall be entitled to receive under the Plan and this Agreement, or

(b) in case the Plan shall have been abandoned, the stock of the Manhattan Company represented by the outstanding Certificates of Deposit,

may instruct the Depositary to hold the stock, and scrip for fractions of shares of stock, of the New Company, or the stock of the Manhattan Company, as the case may be, so lodged with it for the holders of outstanding Certificates of Deposit and to distribute the same to such holders upon surrender to it of their Certificates of Deposit; and, such stock having been so lodged and such instructions so given, the Committee shall be under no responsibility to the De-

positors, and the rights of the Depositors shall be limited to receiving from the Depositary the stock, and scrip for fractions of shares of stock, of the New Company, or the stock of the Manhattan Company, as the case may be, so held by the Depositary.

12. Neither the Committee nor the Depositary nor any sub-depositary is to be under any obligation, legal or equitable, express or implied, to any holder of stock of the Manhattan Company who shall not deposit the same hereunder, or to any person whomsoever, other than the holders of Certificates of Deposit issued in accordance with the terms hereof. With respect to the holders of such Certificates of Deposit, the Committee undertakes to endeavor in good faith to carry out the Plan and this Agreement, but neither the Committee nor any member thereof nor the Depositary nor any sub-depositary assumes any responsibility for the carrying out of the Plan and this Agreement or for the result of any steps taken or acts done for the purpose thereof. Neither the Committee nor any member thereof nor the De- [fol. 86] positary nor any sub-depositary shall be liable for any act or omission of any attorney, agent or employee, or for anything except for his or its own willful misconduct. Neither the Depositary nor any sub-depositary, by the delivery of any Certificate of Deposit hereunder, makes any representation or warranty of any sort whatsoever other than that it agrees to use its best judgment and good faith in the performance of its duties hereunder, and by the acceptance of any such Certificate of Deposit every holder expressly relieves the Depositary and each and every sub-depositary of any liability except as aforesaid. Neither the Committee nor any member thereof nor the Depositary nor any sub-depositary assumes any responsibility or liability as to the genuineness, validity or regularity of any of the stock, or scrip for fractions of shares of stock, of the New Company created or issued in connection herewith, or as to the validity or sufficiency of any corporate proceedings or acts of the Manhattan Company, the Raybestos Company, the United States Company, or the New Company.

Any member of the Committee or any corporation, association or partnership of which any member of the Committee may be an officer, director, member or partner, or the Depositary or any sub-depositary or any officer or director of any of them, may be or become pecuniarily interested in

any stock, Certificates of Deposit, subscription rights, contracts, property or matters which the Plan or this Agreement concerns, and may participate in any underwriting syndicate as syndicate manager, syndicate subscriber, or otherwise, and may be an officer or director of the Manhattan Company or of the Raybestos Company or of the United States Company or of the New Company. The Depositary [fol. 87] or any sub-depositary may be trustee under any agreement created or entered into in connection with the Plan, or otherwise act in any manner for the Manhattan Company or for the Raybestos Company or for the United States Company or for the New Company or for the holders of any of the stock of any of such corporations.

13 Any notice or other communication required or permitted by the provisions hereof to be sent to any Depositor shall be conclusively deemed to have been duly communicated if and when deposited in the United States mail, postpaid, addressed to such Depositor at his address appearing upon the books of the Committee kept by the Depositary.

An affidavit made before a notary public by the Secretary of the Committee, or by an officer or employee of the Depositary, with respect to the mailing of notices herein provided for shall be conclusive evidence of the giving of such notices.

14. The Committee, as from time to time constituted and notwithstanding any vacancy, shall have all the powers, rights and interests of the Committee as named in this Agreement. The Committee may elect a Chairman, and may appoint a Secretary (who may, but need not, be a member of the Committee) who shall keep a record of its acts and proceedings. From time to time the Committee may choose such other officers and designate or cause to be designated such committees or sub-committees (whose members may, but need not, be members of the Committee) as it may see fit, and may confer upon any of its officers, committees or sub-committees such powers as it may deem advisable. The Committee from time to time may add to its number by electing, by a majority vote of its then members, [fol. 88] an additional member or members, and the member or members so elected shall have all the powers, rights and interests of the members of the Committee under the Plan and this Agreement and, together with those herein named or their successors, shall constitute the Committee

under the Plan and this Agreement with like force and effect as though they were specifically named herein. Any member of the Committee may resign by filing written notice of his resignation with the Chairman or Secretary of the Committee. In case at any time a vacancy shall occur in the Committee by death or resignation, or from any other cause, such vacancy may, but need not, be filled by a majority of the then members of the Committee. Notices of changes in the membership of the Committee filed with the Depositary shall bind all parties hereto.

A majority of the members of the Committee shall constitute a quorum for all purposes, and all the powers of the Committee may be exercised by a majority of its then members either at a meeting, or in writing or by telegraph, wireless or cable without a meeting. A member of the Committee by written proxy may authorize any person (who may, but need not, be another member of the Committee) to act in his place for any and all purposes. The certificate of the Chairman or Secretary as to any action by the Committee shall be conclusive upon and full protection to the Depositary and all sub-depositaries and all other persons, and conclusive upon all Depositors, as to all acts and things so certified to have been done by the Committee. The Committee from time to time may make, alter and rescind such rules and regulations for the transaction of its business as it may deem advisable.

[fol. 89] The Committee may appoint such sub-depositaries and may employ such counsel, agents and employees as in its opinion shall be necessary or useful, and may delegate any power or authority as well as discretion. If the Committee shall appoint any sub-depositaries, it may make such regulations with respect to their duties and functions as to it shall seem advisable, and may provide that any Certificate of Deposit issued by any sub-depositary shall be transferable at the office of the Depositary as well as at the office of the sub-depositary issuing the same.

15. The deposited stock and any stock of the New Company received by the Committee shall be held by the Depositary and any sub-depositary subject to the orders of the Committee, and neither the Depositary nor any sub-depositary shall incur any liability for anything done or permitted to be done at the request or direction of the Committee. The Depositary and any sub-depositary shall

be bound to exercise only reasonable care in the safekeeping of the deposited stock and of any other securities or cash which may be deposited with or held by them hereunder respectively and to deal therewith in accordance with the directions of the Committee.

The Depositary or any sub-depositary may resign upon thirty days' notice in writing to the Committee, and the Committee shall have power to remove the Depositary or any sub-depositary and from time to time in its discretion to fill any vacancy however arising in the office of the Depositary or any sub-depositary. In the event of the resignation or removal of the Depositary or any sub-depositary, it shall deliver all cash, securities, property and records held by it hereunder as directed by the Committee.

[fol. 90] 16. The enumeration of specific powers herein conferred upon the Committee shall not be construed to limit or to restrict general powers herein conferred or intended so to be, and it is hereby declared that it is intended to confer upon the Committee in respect of all deposited stock and in all other respects any and all powers which the Committee may deem expedient for carrying out or promoting the purposes of the Plan and this Agreement in any respect, even though any such power be apparently of a character not now contemplated; and the Committee may exercise any and every such power as fully and effectively as if the same were herein distinctly specified and as often as for any reason it may deem expedient.

17. No statement containgd in the Plan or in this Agreement, or in any document, circular letter, notice or communication at any time issued or published by the Committee, by the Depositary, by any sub-depositary, by the Manhattan Company, by the Raybestos Company, by the United States Company, by the New Company or by any officer or attorney of any of said corporations or by any other person, is intended to be, or is to be accepted as, a representation or warranty or a condition of the Plan or this Agreement; and no error, defect or irregularity herein or therein, or in any such document, circular letter, notice or communication, shall release any Depositor, or affect or release any deposit hereunder, except by written consent of the Committee.

18. The Plan and this Agreement shall bind and benefit the several parties hereto, and each and all the survivors,

heirs, executors, administrators and assigns of said parties, and of each of them. The rights of the Depositors shall be such only as are conferred by the Plan and this Agree- [fol. 91] ment and shall be subject to compliance by the Depositors with the terms and conditions set forth therein and herein.

19. This Agreement may be executed in several counterparts and all such counterparts shall be taken together as forming one agreement. Upon the execution of this Agreement by the members of the Committee or a majority of them, an executed counterpart shall be deposited with the Depositary.

In witness whereof, the members of the Committee have executed this Agreement and the Depositors have become parties hereto by depositing their certificates of stock hereunder, as above set forth, all as of the date first above recited.

A. F. Townsend, H. M. Green, F. L. Curtis, Committee.

EXHIBIT "E" TO PETITION

Form 17
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Revised Aug., 1925

(Copy)

Notice and Demand for Tax

Original

Notice is hereby given that there has been assessed against you the amount of tax, penalty, and interest stated hereon. Demand is hereby made for immediate payment thereof. If payment is not made within ten days after date of this notice, the law provides that a penalty of 5 per cent of the amount of the assessment will be added, plus additional interest on such assessment at the rate of 1 per cent per month, until paid.

Date—February 3, 1933

May 8, 1933
Received with Remittance

Cashier.....

To avoid further penalty and interest the amount stated on this notice must be paid to Collector of Internal Revenue at Newark, N. J. within ten days from date stated above.

Name and Address	Items
RAYBESTOS-MANHATTAN, INC. 61 Willett Street, PASSAIC, NEW JERSEY	7,620.24

TO THE COLLECTOR OF INTERNAL REVENUE:

I enclose herewith remittance covering tax, penalties, and interest itemized below:

Tax		$7,620.24
Penalty	25%	
*Penalty	5%	
*Interest Assessed		
Total		$7,620.24

*Applicable to sales tax only.

RAYBESTOS-MANHATTAN, INC.

F. L. Curtis—Treasurer

.....
(signature of taxpayer)

Paid	Assessment	Description
	7,620.24	Doc. Stamp Tax Form 807 dated 0-5 12-24-32

Collector's Paid Stamp

Collector of Internal Revenue

Paid
May 8, 1933
Cashier

Newark, N. J.

Miscellaneous—December, 1932—F—404—L—O

Return this Form with Remittance

2-13640

19

[fol. 93]

EXHIBIT "F" TO PETITION

Form 843
TREASURY DEPARTMENT
INTERNAL REVENUE SERVICE
Revised June, 1930

CLAIM

TO BE FILED WITH THE COLLECTOR WHERE ASSESSMENT WAS MADE OR TAX PAID

The Collector will indicate in the block below the kind of claim filed, and fill in the certificate on the reverse side.

COLLECTOR'S STAMP

(Date received)

REFUND OF TAX ILLEGALLY COLLECTED.
REFUND OF AMOUNT PAID FOR STAMPS UNUSED, OR USED IN ERROR OR EXCESS.
ABATEMENT OF TAX ASSESSED (not applicable to estate or income taxes).

STATE OF *NEW JERSEY*
COUNTY OF *Passaic* } ss:

TYPE OR PRINT

Name of taxpayer or purchaser of stamps: *Raybestos-Manhattan, Inc.*

Business address: *61 Willett Street, Passaic, New Jersey.*

Residence: *A Corporation of the State of New Jersey.*

The deponent, being duly sworn according to law, deposes and says that this statement is made on behalf of the taxpayer named, and that the facts given below are true and complete:

1. District in which return (if any) was filed: *Collector of Internal Revenue in Newark, N. J.*
2. Period (if for income tax, make separate form for each taxable year) from ....., 19...., to ....., 19....
3. Character of assessment or tax: *Documentary Stamp Tax under Schedule A-3, 1926 Act.*
4. Amount of assessment, *$7,820.24;* dates of payment, *May 8, 1933.*
5. Date stamps were purchased from the Government.....
6. Amount to be refunded: *Assessment, plus interest ($165.11) paid $7,785.35*
7. Amount to be abated (not applicable to income or estate taxes) $.....
8. The time within which this claim may be legally filed expires, under Section .....of the Revenue Act of 19...., on....., 19.....

The deponent verily believes that this claim should be allowed for the following reasons:

It filed claim (No. M-41733) for the abatement of documentary stamp tax in the amount of $7,820.24, assessed under the provisions of Schedule A-3 of Section 800 of the Revenue Act of 1926 on 331,012 shares of Raybestos-Manhattan, Inc., common no par value stock, upon an alleged transfer of the right of the Raybestos Company, a Connecticut corporation, and United States Asbestos Company, a Pennsylvania corporation, to receive said shares in consideration of the surrender by stockholders of said corporations of the entire issued and outstanding shares of said corporations and in consideration of said corporations at the instance and request of their stockholders conveying all the business and assets, subject to all the liabilities [fol. 94] *and obligations, of The Raybestos Company and United States Asbestos Company, to Raybestos-Manhattan, Inc., a New Jersey corporation, formed to take over the entire assets, including good-will, and all the obligations and liabilities of The Raybestos Company and United States Asbestos Company, for the purpose of combining into an industrial unit the businesses of these two corporations, said 331,012, shares having been issued direct to the individual stockholders, as follows: 207,012 to stockholders surrendering shares of The Raybestos Company and 114,000*

shares to stockholders surrendering shares of United States Asbestos Company. Said Claim for the abatement of the tax assessed was founded upon legal principles and for reasons similar to those supported in the decision rendered August 19, 1932, by the District Court of the United States in and for the District of Minnesota, Third Division, at Law No. 2313 to the April Term, 1932, Minnesota Mining & Manufacturing Company, a corporation, Plaintiff, v. Levi M. Willcuts, Collector of Internal Revenue, Defendant, and more recently supported in the decision rendered February 11, 1933, by the Circuit Court of Appeals, Fifth Circuit, in the case of Shreveport-El Dorado Pipe Line Co., Inc. v. McGraw, 63 F. (2d) 202.

A conference on the claim for abatement was held in the Internal Revenue Building, Washington, D. C., on the afternoon of May 4, 1933, when deponent decided to stop interest running against the assessment by arranging to pay the amount demanded from it and to file this Claim for Refund, payment under protest not being a condition precedent hereto, but payment being considered essential to giving deponent a cause of action if its claim should be disallowed by the Commissioner.

The reasons for allowance of the claim for abatement will be the reasons presented for allowance of the Claim for Refund. Brief reviewing the facts and in support of such reasons will be filed with the Commissioner of Internal Revenue, at Washington, D. C.

Deponent contends that said Schedule A-3 contains nothing which indicates that the tax therein provided for was intended to be payable where, on the reorganization of a corporation or on the merger of two or more existing corporations, stock of the corporation before it was reorganized was exchanged for stock issued by the corporation as reorganized, or stock of corporations merging was exchanged for stock of a new company formed to effect the merger, the assets and liabilities remaining unchanged, and the capital interests of the several stockholders remaining unchanged, there being no real transfer of a corporate interest or of a right to acquire it where, after the consummation of the reorganization or merger, each stockholder legally owns substantially the same corporate interest which he owned before.

Sworn to and subscribed before
me this *15th* day of *May, 1933.*
Charles E. Cummings,
Notary Public

Signed: *Raybestos-Manhattan, Inc.,*
By S. Simpson
Its President

[fol. 95] EXHIBIT "G" TO PETITION

Treasury Department, Washington

Office of Commissioner of Internal Revenue

Address reply to Commissioner of Internal Revenue and refer to MT:ST:NNH. C1:M:45185.

Dec. 12, 1933.

Raybestos-Manhattan, Inc., % LeFevre & LeRoy, Hibbs Building, Washington, D. C.

GENTLEMEN:

Reference is made to your claim for the refund of documentary stamp tax and interest in the amount of $7,785.35, assessed and paid as a tax on the transfer of the right to receive 381,012 shares of stock of no par value.

You state that the shares were issued in accordance with a plan and agreement whereby a committee was formed

with which was deposited shares of stock of The Rabestos Company(a Connecticut corporation) and the United States Asbestos Company (a Pennsylvania corporation) to be held by such committee pending the formation of your corporation. The agreement provided that the depositing stockholders were to receive shares of stock of the new corporation in lieu of the deposited stock. The new corporation was formed to which the assets of the two other [fol. 96] corporations were transferred, part of the consideration for such transfer being the issue of stock of the new corporation. You contend that the direct issuance of such shares to the depositing stockholders did not involve a transfer of the right to receive stock on the part of The Raybestos Company, and the United States Asbestos Company, inasmuch as the stock was issued in conformity with the agreement arranged by the committee. You refer to the cases of the Minnesota Mining & Manufacturing Company v. Willcuts, and Shreveport-El Dorado Pipe Line Company v. McGrawl, as supporting your view that the transfer tax was not due in this case.

In this connection you are advised that in the case of the Minnesota Mining & Manufacturing Company it was held that the effect of the transaction was an exchange by the new company of its stock for stock of the old company, and while it was held no transfer of the right of the old corporation to receive stock occurred, a tax was subsequently paid by the new corporation on the transfer to it of the stock of the old company. In the instant case it is shown that your corporation accepted offers of the Raybestos Company and the United States Asbestos Company to assign to you the assets of those corporations in consideration of the issuance to such corporations or upon their orders 381,012 shares of your stock of no par value. There was no provision for the exchange of stock by your corporation. This office has uniformly held that in such a case the old corporations have the right to receive the stock issued in consideration for their assets and the issuance of such stock direct to the stockholders involves a transfer on the part of the corporations of their right to receive the stock. It is, [fol. 97] therefore held that the tax was legally collected in this case and the claim is rejected.

In regard to the decision in the case of Shreveport-El Dorado Pipe Line Company, you are advised that the Bureau does not follow that decision.

Respectfully, Guy T. Helvering, Commissioner, by Adelbert Christy, Acting Deputy Commissioner.

HF:HM.

[fol. 98] II. General Traverse—Filed February 16, 1934

And now comes the Attorney General, on behalf of the United States, and answering the petition of the plaintiff herein, denies each and every allegation therein contained; and asks judgment that the petition be dismissed.

Frank J. Wideman, Assistant Attorney General.

III. Argument and Submission of Case

On October 9, 1934, this case was argued and submitted on merits by Mr. Charles H. LeFevre and Mr. Howard S. LeRoy, for plaintiff, and by Mr. Guy Patten, for defendant.

[fol. 99] IV. **Special Findings of Fact, Conclusion of Law and Opinion of the Court by Littleton, J.**—Filed March 4, 1935.

Mr. Charles H. LeFevre and Mr. Howard S. LeRoy for plaintiff.

Mr. S. R. Zimmerman was on the brief.

Mr. Guy Patten, with whom was Mr. Assistant Attorney General Frank J. Wideman, for the defendant.

Plaintiff sues to recover $7,620.24 with interest, representing a transfer stamp tax of two cents a share collected under Schedule A-3 of section 800 of the Revenue Act of 1926 on the number of shares of its no-par-value capital stock issued in consideration for the assets acquired by it from the Raybestos Company and the United States Asbestos Company, namely, 267,012 shares and 114,000 shares,

respectively, totalling 381,012 shares. These shares were issued to the stockholders of the two corporations mentioned, pursuant to the direction of such corporations. These shares constituted the consideration for sale, transfer, and assignment by the Raybestos Company, a Connecticut corporation, and the United States Asbestos Company, a Pennsylvania corporation, of their entire property and assets to plaintiff, and the tax was exacted by the Commissioner as a tax on a transfer by the selling corporations of their "rights to receive such shares" to their stockholders.

Plaintiff contends that as such shares were issued directly to the stockholders of the former corporation in accordance with the plans under which the transactions were carried out, there was no transfer of any right to receive such shares by the corporations whose assets were taken over and that the stock was not otherwise subject to the two cents' tax under the statute.

Special Findings of Fact

1. The plaintiff, a New Jersey corporation with principal office in Passaic, was organized in 1929.

Its total authorized capital stock consists of 1,000,000 shares of common stock without nominal or par value. All such shares issued and outstanding, that are hereinafter mentioned, were issued as full-paid and nonassessable shares.

[fol. 100] 2. At the time of its incorporation, and for many years prior thereto, three separate and distinct industrial corporations, namely, the Raybestos Company, the Manhattan Rubber Manufacturing Company, and the United States Asbestos Company, existed and were doing business, each of which was owned, controlled and operated by entirely distinct and different interests, stockholders, and directors, and none had any interest, direct or indirect, in the business, assets, or properties of the others. The general character of each of the corporations, its business and assets, was as follows:

Raybestos Company

The Raybestos Company was incorporated under the laws of the State of Connecticut, on October 14, 1916, and succeeded to a business which had been established for more

than twenty years at that time. At all times since its incorporation until the sale of its assets and business to plaintiff, it was engaged in the manufacture of standard and specialized articles from asbestos, its principal products being "Raybestos" brake lining and clutch facings for automobiles. It was a pioneer in the industry—the original loom on which "Raybestos" was woven having been one of the first looms designed in America specifically for weaving asbestos brake lining. Through constant research in the origination, development, and improvement of friction fabrics for brakes and clutches, it kept pace with the progress of the automotive industry, and, at the time of the acquisition of its assets by the plaintiff herein, it was the largest purchaser and consumer in the world of long-fiber asbestos for spinning. It has spent, since its incorporation, more than $2,000,000 in advertising its products and name. There were over 3,500 service stations located throughout the United States and Canada licensed by it, and, in addition, over 40,000 garages which carried its products for replacement work. It also distributed its products in Europe through an agency maintained in London, England.

The main plant of the company was located in Bridgeport, Connecticut, with auxiliary plants owned directly or through subsidiaries in Stratford, Connecticut, and Peterborough, Canada. Through its wholly owned subsidiary, General Asbestos & Rubber Company, a South Carolina corporation, it also owned the largest asbestos spinning plants in the world, located in North Charleston, South Carolina. The property owned by it included a plant consisting of a parcel of land in Bridgeport with seven factory, four storage, and other miscellaneous buildings, a fifteen-acre factory site in Stratford, Connecticut, with three factory and seven miscellaneous buildings, and housing properties in Fairfield and Stratford, Connecticut. The property of its subsidiary, General Asbestos & Rubber Company, included eighty-seven acres of land in North Charleston, South Carolina, with five main buildings, auxiliary buildings and 248 dwellings for employees.

Manhattan Rubber Manufacturing Company

The Manhattan Rubber Manufacturing Company was incorporated under the laws of the State of New Jersey, on [fol. 101] October 28, 1933, and was engaged in the manu-

facture of mechanical rubber goods. Its chief products were transmission and conveyor belting, suction and fire hose, press rolls and packing material. The sales of this Company grew from approximately $2,000,000 in 1905 to more than $11,000,000 in 1928. Its plants were located at Passaic and Whippany, New Jersey. It maintained sales branches in the principal cities of the United States and had distributors in foreign countries. Its property included 10.8 acres of land at Passaic, New Jersey, with thirty-one factory buildings, other storage and auxiliary structures, and ten frame buildings on fifty-seven acres of land.

United States Asbestos Company.

United States Asbestos Company was incorporated under the laws of the Commonwealth of Pennsylvania on August 24, 1906. It was engaged in the manufacture and sale of asbestos products, "Grey Rock" brake lining, clutch facings, asbestos cloth, high pressure packing, braided packing, gaskets and other products, which it widely distributed to the manfacturing or wholesale trade. In 1928 it produced approximately 15,000,000 feet of brake lining and over 2,000,000 pieces of clutch facings. Its plant was located at Manheim, Pennsylvana, and consisted of eight factory buildings, thirty other miscellaneous buildings, and four dwellings.

3. On May 14, 1929, the Raybestos Company, the Manhattan Rubber Manufacturing Company, and the United States Asbestos Company entered into a written agreement, signed by the president of each, respectively, subject to the necessary action by directors and stockholders, in which, among other things, it was provided:

"1. A consolidated company shall be formed which either directly or through subsidiaries, using such method as may be approved by counsel, shall own the entire assets of each of the above-named companies. Such consolidated company may be any one of the existing companies or may be a new corporation formed for the purpose under the laws of such State as the parties shall determine.

"2. The capitalization of the consolidated company shall consist of 1,000,000 shares of common stock, such shares to be of no par value and all of one class. Of such authorized stock 631,012 shares shall be issued in exchange for or re-

placement of the shares of common stock of the companies now outstanding, and 45,000 shares shall be sold for cash, as hereinafter provided.

"3. The basis of the issue of stock of the consolidated company for or in replacement of stock of the above-named companies shall be as follows:

"(a) In the case of Raybestos, for the outstanding common stock of that company, consisting of 118,672 shares, there shall be issued 267,012 shares of the consolidated company, each stockholder of Raybestos receiving 2 25/100 shares of the consolidated company for each share of Raybestos common stock.

"(b) In the case of Manhattan, for the outstanding common stock of that company, consisting of 200,000 shares, there shall be issued 250,000 shares of the consolidated company, each stockholder of Manhattan receiving 1 25/100 shares of the consolidated company for each share of Manhattan common stock.

[fol. 102] "(c) In the case of United States, for the outstanding common stock of that company, consisting of 100,000 shares, there shall be issued 114,000 shares of the consolidated company, each stockholder of United States receiving 1 14/100 shares of the consolidated company for each share of United States common stock.

"4. The consolidated company will sell to Hayden, Stone & Co., Hemphill, Noyes & Co., and the Equitable Trust Company, all of New York City, or their nominees, 45,000 shares of stock for $30 per share in cash, under the terms of an agreement substantially in the form hereto annexed, the proceeds of such sale to be used to replace cash required for the retirement of the existing preferred stocks of Raybestos and United States, the balance of such proceeds to be used for the general purposes of the corporation.

"5. Each of the parties hereto will take such steps as may be necessary or expedient, including action by directors and stockholders, to effect the carrying out of the plan herein agreed to as promptly as may be practicable. Each of the parties shall by notice to the others promptly designate a representative to constitute a committee for the purpose of carrying out the plan. The consolidated company shall pay all expenses of every nature involved in

carrying out the plan and the issue and delivery of its stock."

A true copy of this agreement is attached to the petition as exhibit A and is made a part hereof by reference.

4. The directors of each corporation approved the agreement at directors' meetings held by the separate corporations for that specific purpose, and thereafter the agreements as approved at these meetings were submitted to the stockholders of the corporations for approval or rejection. The submission to stockholders was done by means of form letters mailed to the holders of common stock of the respective corporations from the offices of the presidents thereof, enclosing copies of a "Plan and Agreement" dated May 22, 1929, as applicable to each set of stockholders. Copies of the letters and their enclosures are attached to the petition marked exhibits B, C, and D, respectively, and are made a part of this finding by reference.

The letters and the "Plan and Agreement" in each case provided among other things that:

"Under this plan, described in the accompanying 'Plan and agreement', to which you are referred, it is contemplated that a corporation (hereinafter called 'the New Company') will acquire, directly or indirectly, by purchase, merger, consolidation, or otherwise, all of the assets of the three companies, and will assume all of their obligations and liabilities.

"Upon the consummation of the plan, the New Company will have no funded debt and no preferred stock and will have ample working capital.

"With a view of furnishing the stockholders a wider market for their holdings, application will be made to list the stock of the New Company on the New York Stock Exchange.

"Deposit of stock will constitute assent to the plan and agreement. If the plan should fail of consummation because of insufficient deposited stock or otherwise, the deposited stock will be returned to the depositors without charge.

[fol. 103] "The committee constituted by the annexed agreement shall have full discretion as to the method of carrying the plan into effect and the legal procedure incident thereto and also as to the amount of stock • • •

which must be deposited under this plan and the annexed agreement in order to make the consummation of the plan practicable.

"Each stock certificate so deposited must be duly endorsed in blank for transfer or accompanied by a duly executed stock power in form approved by the committee . . .

"The methods to be adopted in carrying out the plan and this agreement shall be entirely discretionary with the committee, and the plan and this agreement are in all respects to be liberally construed so as to enable the committee to carry into effect the purposes of the plan.

"The deposit of shares of stock in accordance with the provisions of the plan and this agreement shall not constitute an assignment thereof, but the title to the deposited stock shall remain in the depositors thereof unless and until the committee shall elect to take title thereto and file with the depositary a certified copy of its resolution so electing, whereupon title thereto shall vest in the committee as joint tenants and not as tenants in common, and in the survivor or survivors of the committee and their successors, or, at the option of the committee, expressed in such resolution, in its nominee or nominees. The depositors severally agree that, at any time when the committee shall have elected to take title to the deposited stock, they will execute and deliver any and all further transfers and assignments or other writings requested by the committee in order more effectively to vest the ownership of the deposited stock in the committee, its nominee or nominees.

"Upon compliance with all the terms and conditions of the plan and this agreement, depositors will be entitled to receive, upon the consummation of the plan, and upon surrender of their certificates of deposit, the stock and scrip for fractions of shares of stock, of the New Company (but only as and when issued and ready for delivery) to which they shall be entitled pursuant to the terms and provisions of the plan and this agreement."

5. All stockholders of each of the aforesaid corporations approved the consummation of the plan, as so submitted, and each such stockholder duly deposited his stock certificate or certificates with the appropriate depositary pursuant to and in conformity with the terms and conditions

prescribed and set forth in said "Plan and Agreement" dated May 22, 1929.

6. Plaintiff was duly organized and took out its articles of incorporation under and pursuant to the laws of the State of New Jersey on the 5th day of July 1929, for the purpose, among other things, of acquiring, owning, and operating the business, properties, and assets, including goodwill, of the aforesaid corporations, pursuant to the aforesaid agreement between the corporations dated the 14th day of May 1929, and the plan and agreement dated the 22nd day of May 1929. Its objects, as set forth in article third of its amended certificate of incorporation filed on July 19, 1929, include manufacturing and dealing in all kinds of asbestos, [fol. 104] rubber, and general loom products, such as brake linings, clutch facings, packings, belting, hose, and automobile accessories.

Thereafter, the entire business and assets of the Manhattan Rubber Manufacturing Company, a New Jersey Corporation, subject to its liabilities and obligations, were acquired by plaintiff pursuant to a merger of the plaintiff and the Manhattan Rubber Manufacturing Company, effected under the provisions of the General Corporation Act of New Jersey, as amended, such merger vesting in the plaintiff all and singular the rights, privileges, powers, and franchises of each of the corporations and all property, real, personal, and mixed, and all debts due on whatever account of the Manhattan Rubber Manufacturing Company, plaintiff issuing ratably and directly to the individual owners of 200,000 shares of the Manhattan Rubber Manufacturing Company common stock, in replacement of their stock interests, 250,000 shares of plaintiff's common stock without nominal or par value.

7. The plaintiff herein acquired the entire business, assets, and goodwill (except the corporate franchise) of the Raybestos Company, subject to its liabilities, (and the assets, business, and goodwill of any and all of its subsidiary corporations, subject to their liabilities), both tangible and intangible, in exchange for 267,012 shares of the common stock of the plaintiff corporation. The property so acquired by agreement was conveyed to it by proper deeds, assignments, bills of sale, and other instruments duly executed and delivered by the Raybestos Company,

all in due and necessary form, sufficient to effect the full and complete transfer and conveyance of said property. The 267,012 shares of the common stock of the plaintiff were issued by it directly to the stockholders of the Raybestos Company in the proportion of 2.25 shares for each share of stock owned by them in the Raybestos Company. The foregoing transactions were all in pursuance of the agreement dated the 14th day of May 1929, the "Plan and Agreement" dated the 22d day of May 1929, and pursuant to a contract entered into between the plaintiff and the Raybestos Company dated September 9, 1929. A copy of the last-named contract is attached to the petition as exhibit H, and is made a part hereof by reference. In this contract it was agreed that the Raybestos Company "will transfer, deliver, and assign to" the plaintiff "all the assets, business, and goodwill of the company, as the same shall exist at the date of such closing, subject to its liabilities, • • • and all of the outstanding capital stock of its subsidiary corporations • • • or, if so requested in writing • • •, all the assets, business, and goodwill of such of said subsidiary corporations as shall be designated in such request subject to their liabilities. In exchange therefor", the plaintiff "will deliver to the company or upon its order certificates for 267,012 shares of your [its] common stock without par value, which certificates will be delivered for account of and will represent shares of such stock issued directly to the holders of common stock of the company, pursuant to said plan, on the basis of two and one-fourth shares of your [its] common stock for each share of the company's common stock held by each such stockholder • • •."

8. Thereafter the plaintiff acquired the entire business, assets, and goodwill (except the corporate franchise) of [fol. 105] the United States Asbestos Company, a Pennsylvania corporation, subject to its liabilities, (and the assets, business, and goodwill of any or all of its subsidiary corporations, subject to their liabilities), both tangible and intangible, in exchange for 114,000 shares of the common stock of the plaintiff corporation. The property so acquired by agreement was conveyed to it by proper deeds, assignments, bills of sale, and other instruments duly executed and delivered by the United States Asbestos Company, all in due and necessary form, sufficient to effect the

full and complete transfer and conveyance of the property. The 114,000 shares of the common stock of the plaintiff were issued by it directly to the stockholders of the United States Asbestos Company in the proportion of 1.14 shares for each share of stock owned by them in the United States Asbestos Company. The foregoing transactions were all in pursuance of the agreement dated the 14th day of May, 1929, the "Plan and Agreement" dated the 22nd day of May 1929, and pursuant to a contract entered into between the plaintiff and the United States Asbestos Company dated September 9, 1929, of exact tenor with exhibit H, attached hereto and made a part hereof by reference. The contract of September 9, 1929, contained the same provisions as adapted to the United States Asbestos Company, quoted therefrom in finding 7 hereof.

9. Thereafter by letter dated October 13, 1932, plaintiff was notified by the Treasury Department, Internal Revenue Bureau, that it was subject and liable to a transfer tax of two cents a share under schedule A-3 of section 800 of the Revenue Act of 1926 on the number of shares of its capital stock issued as the consideration for the assets acquired by it from the Raybestos Company and the United States Asbestos Company, to wit: 267,012 shares and 114,000 shares, respectively, making a total of 381,012 shares, the tax amounting to $7,620.24. A copy of the letter is attached hereto, marked "Exhibit I", and is made a part hereof by reference.

10. Thereafter, upon notice and demand by the collector of internal revenue at Newark, New Jersey, on February 3, 1933, and after protest duly made thereto, plaintiff paid the tax of $7,620.24, together with $165.11 interest thereon, making a total of $7,785.35, on May 8, 1933.

11. May 15, 1933, plaintiff duly filed its claim for refund in which it asked for the refund of the tax and interest of $7,785.35, upon the ground that:

"Deponent contends that said schedule A-3 contains nothing which indicates that the tax therein provided for was intended to be payable where, on the reorganization of a corporation or on the merger of two or more existing corporations, stock of the corporation before it was reorganized was exchanged for stock issued by the corporation as

reorganized, or stock of corporations merging was exchanged for stock of a new company formed to effect the merger, the assets and liabilities remaining unchanged, and the capital interests of the several stockholders remaining unchanged, there being no real transfer of a corporate interest or of a right to acquire it where, after the consummation of the reorganization or merger, each stockholder legally owns substantially the same corporate interest which he owned before."

[fol. 106]. This claim for refund was rejected by the Commissioner, December 12, 1933.

12. Plaintiff paid a tax of five cents a share on each original issue of its common stock without nominal or par value, which, it is conceded, was legally taxed, and it paid under protest the additional tax of two cents a share (in issue here) on the claimed transfers of 267,012 of its shares to the stockholders of the Raybestos Company, of Connecticut, and of 114,000 of its shares to the stockholders of the United States Asbestos Company, of Pennsylvania. Plaintiff contends in this suit, as it did in its refund claim, that such issue of its shares directly to the stockholders rather than to the corporations did not in fact effect a transfer of a right to receive such shares within the meaning of schedule A-3, section 800 of the Revenue Act of 1926.

13. The United States Asbestos Company was dissolved by the Court of Common Pleas of Lancaster County, Pennsylvania, September 27, 1930. The dissolution was not made immediately because of pending litigation. The Raybestos Company has not been dissolved, but has continued in existence because of patent rights which are not assignable. The Manhattan Rubber Manufacturing Company, of New Jersey, lost its identity by merging with the Raybestos-Manhattan, Inc., the plaintiff herein.

Conclusion of Law

Upon the foregoing special findings of fact, which are made a part of the judgment herein, the court decides, as a conclusion of law, that plaintiff is not entitled to recover, and its petition is therefore dismissed.

Judgment will be rendered against plaintiff for the cost of printing the record herein, the amount thereof to be entered by the clerk and collected by him according to law.

OPINION

LITTLETON, Judge, delivered the opinion of the court:

The question in this case arises as a result of the issuance by plaintiff of a certain number of shares of its capital stock as a consideration for the business and assets of the Raybestos Company and the United States Asbestos Company. All the liabilities of each company were assumed by the plaintiff.

In connection with these transactions a merger was effected under the laws of New Jersey between plaintiff and the Manhattan Rubber Manufacturing Company, both being New Jersey corporations, by which plaintiff acquired all the assets of the Manhattan Company. No tax question growing out of the stock issued by plaintiff from that transaction is involved in this case.

Section 800, schedule A-3, of the Revenue Act of 1926 provides as follows:

"Sec. 800. On and after the expiration of thirty days after the enactment of this Act there shall be levied, collected, and paid, for and in respect of the several bonds, debentures, or certificates of stock and of indebtedness, and other documents, instruments, matters, and things mentioned and described in Schedule A of this title, or for or in [fol. 107] respect of the vellum, parchment, or paper upon which such instruments, matters, or things, or any of them, are written or printed, by any person who makes, signs, issues, sells, removes, consigns, or ships the same, or for whose use or benefit the same are made, signed, issued, sold, removed, consigned, or shipped, the several taxes specified in such schedule. The taxes imposed by this section shall, in the case of any article upon which a corresponding stamp tax is now imposed by law, be in lieu of such tax.

* * * * * * *

"Schedule A—Stamp Taxes

* * * * * * *

"3. Capital stock, sales or transfers: On all sales, or agreements to sell, or memoranda of sales or deliveries of, or transfers of legal title to shares or certificates of stock or of profits or of interest in property or accumula-

tions in any corporation, or to rights to subscribe for or to receive such shares or certificates, whether made upon or shown by the books of the corporation, or by any assignment in blank, or by any delivery, or by any paper or agreement or memorandum or other evidence of transfer or sale, whether entitling the holder in any manner to the benefit of such stock, interest, or rights, or not, on each $100 of face value or fraction thereof, 2 cents, and where such shares are without par or face value, the tax shall be 2 cents on the transfer or sale or agreement to sell on each share: Provided, That it is not intended by this title to impose a tax upon an agreement evidencing a deposit of certificates as collateral security for money loaned thereon, which certificates are not actually sold, nor upon the delivery or transfer for such purpose of certificates so deposited, nor upon mere loans of stock nor upon the return of stock so loaned: Provided further, That the tax shall not be imposed upon deliveries or transfers to a broker for sale, nor upon deliveries or transfers by a broker to a customer for whom and upon whose order he has purchased same, but such deliveries or transfers shall be accompanied by a certificate setting forth the facts. * * * "

The important facts are not in dispute. The transactions in question involve a consolidation of the properties and businesses of the two corporations mentioned in the findings with the property and business of the plaintiff, a New Jersey corporation. While the tax in question does not depend upon the question whether a reorganization took place, the facts show that neither transaction was a reorganization of either of the corporations within itself. By separate letters of September 9, 1929, each corporation proposed to the plaintiff that it would "transfer, deliver, and assign all [its] assets, business, and good will, subject to its liabilities" to plaintiff in consideration of the issuance and delivery "to the company or upon its order" of certificates for a specified number of shares of stock of the plaintiff, which certificates it was further proposed should be issued directly to the holders of the common stock of the company making the offer upon the basis therein specified. Each offer, as made, was accepted by plaintiff and the transactions were carried out as agreed.

[fol. 108] Schedule A-3 of section 800 provides, in addition to the tax of five cents a share on an original issue, for a tax of two cents a share on all "transfers of legal title to shares of certificates of stock." It is not questioned that had the Raybestos Company and the United States Asbestos Company received the stock in question and carried out their clearly avowed purpose to distribute such stock by transfers to their stockholders, the payment of a tax of two cents a share here imposed would have been required. We think the liability for such a tax cannot be avoided by an arrangement for the issuance of such stock directly to the stockholders of the selling corporations. The statute imposes a tax upon not only "transfers of legal title to shares of stock" but also upon "other documents, instruments, matters, and things mentioned and described in schedule A", and schedule A requires that the tax be exacted where there has been a transfer of "rights to receive such shares or certificates."

The sole purpose of the section was to raise revenue and its language is very broad. Liability for the payment of the tax is imposed upon the transferor, the transferee, and the corporation whose stock is the subject of the transfer. The language of the section discloses a recognition that if the tax were confined to technical transfers of "legal title to shares" much of the revenue sought to be raised from this source would be lost through arrangements to accomplish the same end by one transaction instead of two. The tax was therefore laid upon the substance of the transaction rather than the form by making transfers of rights to receive such shares the equivalent of an actual transfer thereof. The exemptions allowed are definite and specific, and emphasize the broad purpose of the statute to impose the tax upon transactions such as are involved in this case. This was not a transaction whereby plaintiff acquired the stock of the stockholders of the Raybestos Company and the United States Asbestos Company but it took over the assets of those companies in exchange for its stock. The selling corporations were the ones who had the right to receive the consideration (stock) for their assets and business sold to plaintiff and these corporations, when they transferred their assets to plaintiff, directed that the stock of the plaintiff be delivered "to the company or upon its order." They directed that the stock of plaintiff to be

issued in exchange for the assets and business be issued and delivered to their stockholders. This, we think, was clearly a transfer of legal title to the shares and the transfer of their rights to receive such shares within the meaning of the statute in question. This was the substance of the transaction although it took the form of a direct issuance of the stock to the stockholders of the selling corporations. Plaintiff has cited a number of decisions in support of its argument that the tax was illegally exacted, which we have considered, but we think they are not controlling here and, therefore, we deem it unnecessary to discuss them in detail. It is also contended that the proceedings resulting in the formation and activities of plaintiff involved no sale or transfer of legal title to shares or certificates of stock, that merely the evidences of legal title to capital interests, or to shares not actually sold but retained by their owners, entered into the transaction, and they required exchanging of certificates to disclose properly the capital interest of each share-owner after the mer- [fol. 109] ger of separate business into a single enterprise; that the right to receive the certificates of plaintiff's no-par-value shares evidencing the individual capital interests when merged, given in replacement of certificates evidencing the same capital interests before the merger, belonged to the owners of such capital interests, the individual stockholders, and to assume otherwise is to recognize shadow or semblance for substance or reality. We think, however, that there was an outright purchase by plaintiff of the business and assets of the two corporations mentioned and that such corporations were the ones legally entitled to receive plaintiff's shares in the transaction, and that, in substance, there was a transfer by them of their right to receive such shares to their stockholders. United States v. Brown Fence & Wire Co. (D. C. Northern Dist. Ohio), January 31, 1935; C. C. H. Tax Service, vol. 3, par. 9144; P.-H Tax Service, vol. 1, par. 869. Since the statute lays the tax upon the substance of the transaction, we are of opinion that the Commissioner correctly exacted the payment of the documentary stamp tax of two cents a share in question.

The petition must be dismissed and it is so ordered.

WHALEY, Judge; WILLIAMS, Judge; GREEN, Judge; and BOOTH, Chief Justice, concur.

[fol. 110] V. JUDGMENT

At a Court of Claims held in the City of Washington on the 4th day of March, A. D., 1935, judgment was ordered to be entered as follows:

Upon the special findings of fact, which are made a part of the judggment herein, the court decides, as a conclusion of law, that plaintiff is not entitled to recover.

It is therefore ordered and adjudged that the plaintiff's petition be and the same is hereby dismissed.

[fol. 111] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 112] EXHIBIT "H"

September 9, 1929.

I certify that the attached is Exhibit "H", referred to in Finding 7, and made a part thereof by reference.

Test:

F. C. Kleinschmidt, Assistant Clerk Court of Claims.

Raybestos-Manhattan, Inc., 61 Willett Street, Passaic, New Jersey.

DEAR SIRS:

We set forth herein the agreement between you and the undersigned, The Raybestos Company(hereinafter sometimes termed the "Company"), with respect to the sale by the Company, pursuant to the Plan of Reorganization attached hereto as Exhibit A, to you, of the assets, business and goodwill (except the corporate franchise) of the Company, subject to its liabilities (and the assets, business and good will of any or all of its subsidiary corporations if requested by you, subject to their liabilities), both tangible and intangible, as constituted at the time of the closing hereunder, in exchange for shares of your stock to be distributed to the stockholders of the Company pursuant to the said Plan.

1. Capitalization of Raybestos-Manhattan, Inc.

It is understood that your corporation is duly organized and existing and in good standing under the laws of the State of New Jersey and has a duly authorized capital stock consisting of 1,000,000 shares of Common Stock without par value, of which 631,012 shares are to be issued in connection with the acquisition by your corporation of the assets, business and good will of the Company and of United States Asbestos Company, a Pennsylvania corporation, and the merger of The Manhattan Rubber Manufacturing Com- [fol. 113] pany, a New Jersey corporation, into your corporation, and 45,000 shares are to be sold for cash. You have entered or are about to enter into the following contracts:

(a) A contract with said United States Asbestos Company providing for the transfer to you of all its assets, subject to its liabilities:

(b) An agreement of Merger and Consolidation with said The Manhattan Rubber Manufacturing Company;

(c) A contract with Hayden, Stone & Co., Hemphill Noyes & Co., and The Equitable Trust Co. of New York, providing for the sale to them of 45,000 shares of your Common Stock.

2. Organization and Condition of the company and its subsidiaries. The Company is duly organized and existing and in good standing under the laws of the State of Connecticut. A statement with respect to the organization and condition of the Company and its subsidiaries is attached hereto as Exhibit B and shall be deemed representations and warranties by the undersigned hereunder.

3. Transfer of assets and business of the company and its subsidiaries. At the closing hereunder and pursuant to the Plan:

The Company will transfer, deliver and assign to you all the assets, business, and good will of the Company, as the same shall exist at the date of such closing, subject to its liabilities, including but without limiting the generality of the foregoing, (a) the good will of said business and the

exclusive right to use the name "Raybestos" or "The Raybestos Company" or any similar name or names to the full extent possessed by the Company, and (b) all of the out-
[fol. 114] standing capital stock of its subsidiary corporations (hereinafter sometimes called its "subsidiaries") named in Exhibit B hereto annexed, or, if so requested in writing by you, all the assets, business and good will of such of said subsidiary corporations as shall be designated in such request subject to their liabilities.

In exchange therefor, pursuant to said plan, (a) you will deliver to the Company or upon its order certificates for 267,012 shares of your Common Stock without par value, which certificates will be delivered for account of and will represent shares of such stock issued directly to the holders of common stock of the Company, pursuant to said Plan, on the basis of two and one-fourth shares of your Common Stock for each share of the Company's common stock held by each such stockholder and you will issue, in lieu of any fraction of a share of your Common Stock issuable to any stockholder of the Company, non-voting and non-dividend bearing Common Stock Scrip, exchangeable in amounts calling for one or more full shares for a certificate for such share or shares; provided that, if any stockholder of the Company whose stock shall not be voted in favor of such sale shall demand payment for his stock, you will in lieu of the delivery to the Company of the certificate for your Common Stock and Common Stock Scrip issuable to such stockholder on the basis above stated, pay to the Company for distribution to such stockholder pursuant to the Plan such sum in cash as in accordance with the laws of Connecticut shall be payable to him on account of his stock of the Company, such payment to be made forthwith upon the determination of its amount; and (b) by appropriate instruments, you will assume all of the liabilities, contracts,
[fol. 115] commitments and other obligations of the Company (and of those subsidiaries of the Company whose assets, business and good will shall be acquired by you as above provided) which shall exist at the date of the closing hereunder, each consideration to be received by you hereunder for your stock to be issued as herein provided, only $—— is contributed as capital and the remainder is contributed as surplus to be used for such purposes, including the payment of dividends as you may determine.

4. Amendment of certificate of incorporation. Prior to or immediately after the completion of the transfer and conveyance of the property of the Company and/or such subsidiaries as shall have been designated by you in the manner provided in paragraph 3 hereof, the Company's Certificate of Incorporation will be amended so as to provide that the duration of the corporation shall be limited to a date which shall be the date of, or immediately following, the date of such transfer and conveyance and the Company thereupon will cease all business activities of every kind and take all necessary steps (a) to make the names "Raybestos" and "The Raybestos Company" and the names of, and trade names used by, the Companay's subsidiaries, and all parts and combinations thereof, available for use by you, your successors and assigns, to the full extent to which the use of such names is available to the Company and/or its subsidiaries, in such manner as you may elect.

[fol. 116] 5. Insurance. The Company, from the date hereof until the closing hereunder, will maintain full and adequate insurance in responsible stock or mutual insurance companies, upon all the tangible assets of the Company and its subsidiaries, against loss by fire, flood, tornado, explosion, accident or other casualty, so far as ordinary forms of insurance may be procured against such losses, as well as public liability coverage of $20,000/$40,000 limits.

6. Corporate proceedings and orders. The Company, whenever requested by you, will forthwith take, and will cause such of its subsidiaries as shall have been designated by you in the manner provided in paragraph 3 hereof, to take all corporate proceedings required to authorize or approve the execution and delivery of all instruments, documents, agreements, certificates, letters, orders, insurance contracts, and papers (hereinafter collectively termed "Instruments of Transfer") which are to be executed and delivered in connection with the transfer contemplated by this agreement and in connection with the dissolution of the Company and/or of its subsidiaries, and will deliver any orders to the depositaries of cash of the Company and/or its subsidiaries, which you may request, to facilitate the prompt transfer on the day of the closing of any accounts with such depositaries.

7. Closing. (a) The closing hereunder shall take place at 61 Willett Street, Passaic, New Jersey, and shall take [fol. 117] place not later than October 15, 1929, at such time as shall be specified by written or telegraphic notice from you to the Company, such notice to be given not later than three days before the day so fixed for the closing.

(b) At the closing hereunder the Company will cause to be delivered to you (i) all deeds, assignments, bills of sale and other instruments (in form mutually satisfactory to counsel for the Company and you) necessary to effect the full and complete transfer and conveyance to you of the property of the Company and, if so requested as above provided, in lieu of the stock thereof, the property of any or all of its subsidiary corporations and (ii) all contracts for insurance referred to in paragraph 5 hereof duly assigned so as to insure your interest with respect to such property as you may request; and the Company will deliver to each bank or trust company which is a depositary for its cash, instructions to hold all cash of the Company deposited with it for your account, provision to be made for checks of the Company delivered prior to the day of closing, and will cause similar instructions to be delivered by those of its subsidiaries, if any, whose assets are to be transferred as herein provided; and simultaneously therewith you will deliver to the Company or on its order the number of shares of its Common Stock above specified.

[fol. 118] (c) All instruments of transfer and conveyance so to be delivered by the Company at the closing shall contain covenants obligating the Company and/or its subsidiaries, at your request and expense, at any time from time to time to execute and deliver such further instruments of conveyance and transfer as you may reasonably require for the purpose more effectively of conveying and transferring to you any of the said property of the Company and/or its subsidiaries and to assist in the collection or reduction to possession of any of such property and in the defense of any suit or other proceedings against you which shall arise in whole or in part out of any matter or things which occurred prior to the closing hereunder. All conveyances of real estate shall be by warranty deed. To the extent necessary to facilitate the recordation or filing of any such instrument of conveyance or transfer, the Company will cause

to be executed, acknowledged and delivered separate instruments of conveyance or transfer.

(d) Simultaneously with the transfer and conveyance herein provided for, you will be let into full possession and enjoyment of the property of the Company and/or its subsidiaries provided to be transferred hereunder, provided, however, that the Company shall have reasonable access to the records of the Company and/or its subsidiaries delivered to you.

8. Information to be furnished and facilities for investigation to be afforded the purchaser. At the time of closing [fol. 119] hereunder the Company will furnish to you without expense to you the information set forth in Exhibit C hereto attached. Any information contained in this agreement or any exhibit attached hereto may be used in combination with similar information regarding other corporations in connection with the sale of your stock and the formation of purchase, selling and other groups and syndicates and any public offering of such stocks.

9. Bulk sales laws. Prior to the closing hereunder and to the extent requested by you, the Company, at its expense, will comply with the provisions of the so-called Bulk Sales Law of each state in which the Company and/or its subsidiaries is authorized to do business.

10. Expenses. All expenses of the Company in connection with this Agreement and the transfer and conveyance contemplated hereby, shall be borne by you. You will also pay all fees and expenses of the auditors, appraisers, counsel and/or other agents employed by you.

11. Performance. Any obligation or liability hereunder on your part is subject to the conditions precedent set forth in Exhibit D hereto attached, any of which may be waived by you.

Any obligation of the Company to transfer to you its assets, business and good will or the assets, business and good [fol. 120] will of any of its subsidiaries is conditioned upon

(a) your acquiring, at the time of such transfer, or furnishing to the Board of Directors of the Company, evidence satisfactory to it, that within one week from the date of closing you will acquire all the assets, business and good

will of United States Asbestos Company, a Pennsylvania corporation, and of The Manhattan Rubber Manufacturing Company, a New Jersey corporation, subject to their liabilities, and

(b) the business of said United States Asbestos Company and said The Manhattan Rubber Manufacturing Company having been carried on since May 14, 1929, in the ordinary course and no unusual liability or commitment having been incurred by such companies since that date, and no distribution having been made since that date to stockholders of such companies other than dividends at the rates established prior thereto and other than the redemption of the Preferred Stock of United States Asbestos Company.

12. Notices. All notices to be given to you hereunder shall be given by delivering, mailing or telegraphing the same addressed to you at 61 Willett Street, Passaic, New Jersey. All notices to be given to the Company hereunder shall be given by delivering, mailing, or telegraphing the same to the Company at Bridgeport, Connecticut. The time of the giving of any such notice shall be deemed to be the time when such notice is so delivered, mailed, or telegraphed, as the case may be.

[fol. 121] This agreement shall enure to the benefit of and be binding upon the respective legal representatives, successors and assigns of your corporation and of the undersigned.

Kindly indicate your acceptance of this agreement by signing in the space provided below.

Very truly yours, The Raybestos Company, by S. Simpson, President. Attest: Geo. W. Hudson, Secretary.

Accepted:

Raybestos-Manhattan, Inc., by H. M. Green, Vice-President. Attest: Morton F. Judd, Secretary.

[fol. 122] EXHIBIT "A" TO AGREEMENT

Plan

It is proposed that all of the business and assets of The Raybestos Company, a Connecticut corporation (herein

called "the Raybestos Company"), The Manhattan Rubber Manufacturing Company, a New Jersey corporation (herein called "the Manhattan Company") and United States Asbestos Company, a Pennsylvania corporation (herein called "the United States Company") shall be acquired directly or indirectly, by purchase, merger, consolidation, or otherwise, by a corporation (herein called "the New Company"), the New Company to assume all of the liabilities and obligations of the Raybestos Company, the Manhattan Company and the United States Company.

The New Company shall have an authorized capital of 1,000,000 shares of common stock, without par value, and may be a new corporation organized under the laws of any state selected by the Committee constituted by the Agreement annexed hereto or, at the election of such Committee, the New Company may be any one of the above-named companies with appropriate change of its present capital structure and charter.

[fol. 123] The stockholders of the above-named companies are to receive stock of the New Company on the following basis:

2¼ shares of common stock of the New Company for each share of common stock of the Raybestos Company.

1¼ shares of common stock of the New Company for each share of stock of the Manhattan Company.

1 14/100 shares of common stock of the New Company for each share of common stock of the United States Company.

In lieu of any fraction of a share of common stock of the New Company deliverable to any stockholder of any of the above-named companies, there will be issued non-voting and non-dividend bearing common stock scrip, exchangeable, in amounts calling for one or more full shares, for a certificate for such share or shares.

On the above basis there will be required for distribution to the common stockholders of the Raybestos Company, the Manhattan Company and the United States Company an aggregate of 631,012 shares of common stock of the New Company. The New Company will sell a further 45,000 shares of such stock for cash to provide additional capital.

[fol. 124] If any holder of shares of the common stock of The Raybestos Company whose stock shall not have

been voted in favor of this Plan shall demand payment for his shares in accordance with the laws of Connecticut, the New Company will pay to Raybestos (in lieu of the delivery of the shares of its stock otherwise issuable to such stockholder) the sum which such stockholder shall be entitled to be paid for his stock under the laws of Connecticut.

[fol. 125] EXHIBIT "B" TO AGREEMENT

(See Paragraph 2)

Representations and Warranties With Respect to the Organization and Condition of the Company and its Subsidiaries

(a) Capitalization. The Company has a duly authorized and issued and outstanding capital stock as follows:

	Authorized.	Issued and outstanding.
Common Stock (par value $25 per share)	200,000	118,672 shares
Preferred Stock (par value $100 per share)	30,000 shares	None

All of such issued and outstanding capital stock is fully paid and non-assessable.

Of the 30,000 shares authorized as above stated a total of —— shares were issued. On July 1, 1929, all the shares of Preferred Stock then remaining outstanding were redeemed.

Copies of the following instruments, correct and complete as of the date of the agreement to which this Exhibit is attached, have been delivered to Raybestos, namely:

1. Certificate of Incorporation of the Company and all amendments thereto, certified by the proper state official; and

2. By-Laws of the Company and all amendments thereto, certified by the Secretary of the Company.

No change will be made in the authorized or outstanding [fol. 126] capital stock of the Company or in its Certificate of Incorporation or By-Laws prior to the closing under the agreement to which this Exhibit is attached, without the prior written approval of Raybestos-Manhattan, Inc.

(b) Financial Condition. Attached to this Exhibit B as Schedule 1 is a consolidated balance sheet of the Company and its subsidiaries as at —— —, 1929; such balance sheet is complete and correct and discloses all liabilities and obligations of the Company and its subsidiaries whether actual, accrued, contingent or otherwise as at the dates thereof.

Since —— —, 1929, no distribution to stockholders of the Company has been made and no record of stockholders of the Company for the purpose of such a distribution has been taken, except that cash dividends amounting to $—— have been paid on the Common Stock and $—— on the Preferred Stock of the Company and such Preferred Stock has been redeemed, and prior to the closing under the agreement to which this Exhibit is attached no such distribution will be made or record taken.

Since —— —, 1929, no bonus or other special or increased compensation has been paid or awarded to any officer or employee of the Company, and prior to the closing under the agreement to which this Exhibit is attached, no such bonus or other special or increased compensation will be paid or awarded.

[fol. 127] Since —— —, 1929, the affairs and business of the Company have been conducted in the ordinary course of business (except that its Preferred Stock has been redeemed), and prior to the closing under such agreement to which this Exhibit is attached, the affairs and business of the Company will be conducted in the ordinary course of business.

Such changes as have occurred in the financial condition of the Company since —— —, 1929, (except the redemption of all the outstanding Preferred Stock of the Company on July 1, 1929), have been in the ordinary course of business, and prior to the closing hereunder there will be no other change in the assets or liabilities of the Company as shown on the attached balance sheet as at —— —, 1929, except in the ordinary course of business.

There is no litigation or governmental investigation pending or threatened against the Company or any of its subsidiaries nor any reasonable basis therefor known to the Company.

(c) Earnings. The consolidated net earnings of the Company and its subsidiaries after all deductions, for the years

ended December 31, 1926, December 31, 1927, and December 31, 1928, respectively, have been as follows:

[fol. 128] Year ended December 31, 1926.....$
Year ended December 31, 1927.....$
Year ended December 31, 1928.....$

(d) Contracts and Commitments. The Company and its subsidiaries have no contracts extending beyond one year from the date hereof and no unusual contracts or unusual commitments for services, materials or otherwise.

(e) Personal Property and Accounts Receivable. The Company and its subsidiaries now own, and at the time of the closing hereunder will own outright all personal property and accounts receivable reflected on the balance-sheet dated as of —— —, 1929, attached to this Exhibit as Schedule 1, and all accounts receivable arising in the interval between the date of said balance sheet and the date of the closing under the agreement to which this Exhibit is attached, except such as have or shall have been disposed of or liquidated since the date of said balance sheet in the ordinary course of business; and all such personal property and accounts receivable are now, and at the time of the closing hereunder will be, free and clear of all pledges, liens, chattel mortgages, conditional sale agreements and other encumbrances whatsoever, except liens securing liabilities reflected in such balance sheet.

(f) Real Estate. The Company now has, and at the time of the closing hereunder will have, good and marketable [fol. 129] title in fee simple to its factory sites at Bridgeport and Stratford, Connecticut, and to all the real estate which is reflected on the balance sheet attached to this Exhibit as Schedule 1, free and clear of all mortgages, liens or encumbrances whatsoever. At the time of closing under the agreement to which this Exhibit B is attached, all buildings constituting part of such real estate will be in the condition which they were in on —— —, 1929, ordinary wear and tear excepted and except for the occurrence of any fire, flood, explosion, accident or other casualty.

The Company now holds and at the time of closing hereunder will hold a good and valid lease (a copy of which has been exhibited to Raybestos-Manhattan, Inc.) from The Stanley Works, a Connecticut corporation, for a term of five years from the 1st day of July, 1928, at an annual

rental of $4,200 per year, of certain premises described in said lease and adjoining the Bridgeport factory of the Company on the north.

(g) Subsidiaries. The Company now owns and at the time of the closing hereunder will own all the issued and outstanding capital stock, consisting of 675 shares of the par value of $100 per share, of The Canadian Raybestos Company Limited (a Canadian corporation) and all the issued and outstanding capital stock, consisting of 15,000 [fol. 130] shares of the par value of $100 per share, of General Asbestos & Rubber Company (a South Carolina corporation).

The Canadian Raybestos Company Limited is engaged in the manufacture and sale of Asbestos products in Canada. General Asbestos & Rubber Company manufactures chiefly asbestos yarn and cloth and sells these products together with other asbestos products to or through the Company.

[fol. 131] EXHIBIT "C" TO AGREEMENT

(See Paragraph 8)

Information to be Furnished Raybestos-Manhattan by the Company at the Closing

(a) A certificate, satisfactory to the purchaser, by the President and Treasurer of the Company stating that since —— —, 1929, the business of the Company had been conducted in ordinary course, and that no unusual expenditures or disbursements have been made (except for the redemption of the Company's Preferred Stock);

(b) An opinion of counsel, satisfactory to Raybestos-Manhattan, Inc. to the effect that all corporate and other proceedings have been duly taken by the Company and/or its subsidiaries to authorize and approve the transfer and conveyance contemplated by the agreement to which this Exhibit is attached and that Raybestos-Manhattan, Inc. upon such transfer and conveyance will receive good and marketable title to the real estate reflected on the balance sheet attached to Exhibit B as Schedule 1, and to all other assets of the Company.

(c) Copies of all notices to and resolutions of the Board of Directors and Stockholders of the Company and/or its subsidiaries relating to the ratification of the agreement to which this Exhibit is attached, and the approval of the transfer contemplated by such agreement, certified by the Secretaries of the Company and/or its subsidiaries.

[fol. 132] (d) List of stockholders of the Company as shown by the stock books of the Company, showing the number of shares held by each, their respective record addresses as at the date of closing under the Reorganization Agreement to which this Exhibit is attached and which shares held by each such stockholder were voted for or against the Company's entering into such Reorganization Agreement and the sale and transfer of its assets as there contemplated, certified by the transfer agent of the Company.

[fol. 133] EXHIBIT "D" TO AGREEMENT

(See Paragraph II)

Conditions Precedent to Liability of Raybestos-Manhattan, Inc., Under the Agreement to Which This Exhibit is Attached

Any obligation or liability under the agreement to which this Exhibit is attached, on the part of Raybestos-Manhattan, Inc. is subject to the following conditions precedent, any of which may be waived by Raybestos-Manhattan, Inc.:

(1) the correctness and fulfillment at the time of closing under such agreement of all representations and warranties made by the Company under such agreement;

(2) the performance of, and compliance with, all agreements and conditions contained in such agreement to be performed, or complied with, on the part of the Company at or prior to the time of closing under such agreement;

(3) the completion, and approval by counsel for Raybestos-Manhattan, Inc., of all corporate and other proceedings which such counsel may reasonably require of the Company and/or its subsidiaries in order that the transfer and conveyance contemplated by such agreement validly may be made;

(4) the receipt by Raybestos-Manhattan, Inc., of the instruments and papers referred to in Exhibit C of the agreement to which this Exhibit is attached.

[fol. 134] EXHIBIT "I"

Treasury Department,

Internal Revenue Service,

Accounts and Collections

E. L. Swift, Supervisor of Accounts and Collections.

Room 636, Custom House,
New York, N. Y., October 13, 1932.

Raybestos-Manhattan, Inc.,
61 Willett Street, Passaic, New Jersey.

GENTLEMEN:

One of the revenue agents operating under my supervision has just completed an investigation concerning the acquisition by your company of the assets of The Raybestos Company and the United States Asbestos Company.

There were issued as the consideration for the assets acquired 381,012 shares of your common no par value stock, as follows:

The Raybestos Company	267,012	shares
United States Asbestos Company	114,000	"
Total	381,012	"

which shares were issued direct to the individual shareholders of the vendor corporations.

In view of these shares of stock having been issued direct to the individual shareholders of the vendor corporation, rather than to the corporations having the right to receive this stock, there has been a transfer of a right to receive, and liability to transfer tax of 2¢ per share has been incurred under Schedule A-3 of Section 800 of the Revenue Act of 1926, on the number of shares so issued, namely 381,012 shares, the tax amounting to $7,620.24.

As the Chase National Bank, New York City, is the transfer agent of your stock, will you kindly forward your certified check to this institution, or otherwise arrange for the purchase of the necessary revenue stamps to be properly affixed and cancelled under the supervision of this office, at the same time advising this office when you have made the necessary arrangements. Your prompt attention to this matter is requested.

Yours sincerely, (Signed) E. L. Swift, Supervisor in Charge.

No. 42580

RAYBESTOS-MANHATTAN, INC.

vs.

THE UNITED STATES

I certify that the attached is Exhibit "I", referred to in Finding 9, and made a part thereof by reference.

Test:

F. C. Kleinschmidt, Assistant Clerk, Court of Claims.

(Seal.)

Endorsed on cover: File No. 39,478. Court of Claims. Term No. 850. Raybestos-Manhattan, Inc., petitioner, vs. The United States. Petition for a writ of certiorari and exhibit thereto. Filed April 6, 1935. File No. 850 O. T. 1934.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 20, 1935

The petition herein for a writ of certiorari to the Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.